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THE TOWN PROPRIETORS  
OF THE NEW ENGLAND  
COLONIES



# THE TOWN PROPRIETORS OF THE NEW ENGLAND COLONIES

A STUDY OF THEIR DEVELOPMENT, ORGANI-  
ZATION, ACTIVITIES AND CONTRO-  
VERSIES, 1620-1770

BY

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PETER SMITH

1963



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To  
MY FATHER  
And  
To the Memory of  
MY MOTHER

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## PREFACE

The present study is an attempt partially to fill the gap which exists in the understanding of the economic phases of the New England colonial life. It was begun under Professor M. W. Jernegan at the University of Chicago, expanded and continued under Professors F. J. Turner and S. E. Morison at Harvard University, and completed under Dean H. V. Ames and Professors A. B. McKinley and St. G. L. Sioussat at the University of Pennsylvania. The writer wishes to take this opportunity to express the deepest gratitude he owes to them, especially the last named three, for their sympathetic directions, invaluable suggestions, and constructive criticisms in the course of his researches. Professor Sioussat's assistance in putting the study into the present form and in reading the proofs was particularly appreciated. However, the writer alone is responsible for its final form and contents.

The writer also wishes to acknowledge his indebtedness to the following for their kindness in permitting the use of valuable manuscript materials which were necessary in the completion of the study: Mr. J. H. Edmunds of the Massachusetts Archives, Mr. J. H. Tuttle of the Massachusetts Historical Society, Mr. A. C. Bates of the Connecticut Historical Society; the officers of the Connecticut State Library, the Maine Historical Society, the American Antiquarian Society, and the Pennsylvania Historical Society; and several town clerks and Registrars of Deeds in Massachusetts.

The study is by no means complete and perfect in every detail, but the writer sends it forth to the public with the hope that some day some one will pick up its threads and weave another and more perfect fabric until every thread of source materials is exhausted.

*New York City, May, 1924.*

R. H. A.

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THE TOWN PROPRIETORS  
OF THE NEW ENGLAND  
COLONIES





## CHAPTER I

### INTRODUCTION

#### I

The term "proprietor" was used in two distinct senses in the American colonies. In order fully to understand the nature and the scope of the present study, therefore, it is necessary at the outset to distinguish these two usages.

The more familiar usage of the word "proprietor" is with reference to the proprietary provinces. The "Lords Proprietary" or "Lords Proprietors," whether single persons or groups of grantees, were created and constituted by the crown on the model of the Palatinate of Durham. They held both territorial and governmental powers and like "the feudal seigneurs of the middle ages, became, or aimed to become, the lords of great colonial territories to which they were to stand as to any fief or estate of land."<sup>1</sup> The institution, in this sense, was essentially feudal and monarchical in its character. The more noted examples of such Lords Proprietary or Proprietors are William Penn of Pennsylvania and Lord Baltimore of Maryland. Chief among the many others are the Earl of Carlisle, the Lord Palatine of Barbadoes and adjoining islands; the first Earl of Stirling, the lord proprietor of Nova Scotia, half of Maine, and Long Island; the Earl of Arundel and of Surrey of the early Carolinas; Sir George Carteret and Lord John Berkeley of the Jerseys; Sir James Hamilton of the Narragansett country; the Earl of Lenox, Lord Maltravers; and the eight Proprietors of Carolina.

<sup>1</sup> Andrews, *The Colonial Period*, 30.

## 2 TOWN PROPRIETORS OF N. E. COLONIES

At an early date similar proprietors were also created in connection with New England. In fact, many of the above named Lords Proprietors received grants of land in New England on the feudal tenure of holding of the crown by the sword. The most important, however, was Sir Ferdinando Gorges who aspired to develop in New England a proprietary province of which he should be "true and absolute proprietor," with sub-fiefs and private plantations. He became a grantee of large territories in New England, both under the crown and the Council for New England, but by 1639 all his efforts had failed and his great proprietary province had practically dwindled away with the exception of a small portion of Maine which eventually passed into the hands of the Massachusetts Bay Company.

Of similar type were the members of the Council for New England and their grantees. The Council issued nearly thirty land patents during its life time, 1620 to 1635, and these titles all served in the eighteenth century to complicate the claims to Maine territories which were already sufficiently confused. The most notable of these numerous patentees or proprietors, later strengthened by the royal patent, was Captain John Mason who claimed all of New Hampshire and with Gorges a part of Maine. The Massachusetts Bay Company was technically of the same type before it removed the charter to New England and transformed itself into a corporate colony. Even the trading companies created in England, such as the East India Company or the Moscovite Company, possessed similar characteristics unless, as in the Massachusetts Bay Company, a change was deliberately accomplished.

It is however the other and relatively little known usage of the term "proprietor" which forms the subject of the present study. Used with reference to the proprietors of New England towns, the word is quite different from the use of it in the phrase "Lords Proprietors." We may

define the proprietors of New England towns, in the first instance, as the original grantees or purchasers of a tract of land, usually a township, which they and their heirs, assigns, or successors, together with those whom they chose to admit to their number, held in common ownership. They enjoyed the absolute ownership and exclusive control over such tract or tracts of land granted to them and were responsible collectively for the improvement of the new plantation. More specifically, they were responsible for inducing and enlisting settlers and new comers, for locating home lots and dwelling houses, for building highways and streets, for subdividing the adjacent arable land, and subjecting the meadow and forest, for a time at least, to a common management. In other words, they constituted the nucleus of the newly settled community and at first they controlled the whole machinery of the town's life, both political and economic. "They formed a *de facto* land company" and were "proprietors in the true sense of the term."<sup>2</sup>

This connotation of the proprietors as the original grantees soon came to be affiliated with another and more common meaning. After parcelling out home lots, common field and pastures, and town common and other public lots, the proprietors set aside what was remaining of the original grant as the "common and undivided lands." These common lands were, of course, exclusively under their own control and management. At first, while the inhabitants were all or nearly all proprietors and the land was plenty and cheap, this process was practically meaningless. As the population increased and the price of land proportionately rose, the homogeneous town life was displaced by heterogeneous elements. Land became an increased object of desire both to those who did and to those who did not control it, while the source of supply was gradually de-

<sup>2</sup> Osgood, *The American Colonies in the Seventeenth Century*, I: 461.



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creasing. At the same time, the proprietors or their heirs and assigns, and possibly purchasers, alone had the sole right to any divisions of the common and undivided lands on the basis of the original grant; and the bulk of the inhabitants were completely excluded from such privilege. The natural result was the solidification of the proprietors or the "commoners" as the sole shareholders in the division of the common and undivided lands. In the older towns, where there existed the practice of common cultivation and common pasturage, the proprietors alone claimed these rights and the term "commoners" signified the shareholders in the common field in contradistinction from the other inhabitants who did not possess these privileges. In every one of these cases, the proprietors or commoners were identified with the possessors of the right of commonage. Eventually, these common fields were also divided in severalty and distributed among the commoners according to their shares in the field. In either case, the term proprietors came to be applied to those persons, either resident or non-resident, who had a right to share in the division of the common and undivided lands. In this sense, the proprietors included not only the original grantees and their heirs and assigns, but also those who purchased proprietary rights.

We must here make a clear distinction between the proprietors and the other inhabitants of the New England towns. In every town, even from the beginning, there were inhabitants and grantees of town land who were not admitted to the privileged body of proprietors. This second class, which formed the majority of any town population, was known as the "non-proprietors" or the "non-commoners" in contradistinction to the proprietors or commoners. They came to live within the town's limit mostly after the original settlement was made by the proprietors and were unfortunately excluded from the owner-

ship and privilege of the common and undivided lands. In the case of the speculative land grants of the eighteenth century, the proprietors were mostly non-resident and the inhabitants were all, or nearly all, non-proprietors. They might hold a freehold, but the freehold did not admit them to a proprietary share. They might become legal inhabitants and freemen of the town and obtain a voice in town meetings, or even be freemen of the colony, and yet did not find admission within the privileged circle of the proprietors. "The idea of freemanship," in the language of Osgood, "was political in its nature, that of proprietorship was territorial." The freemanship, in other words, implied the exercise of the franchise, while the proprietorship was exclusively a property right.

## II

Having defined the term "proprietors" as it was used in New England towns, we must next give it a place in the New England land system. For this purpose we shall briefly examine the steps by which the title to land passed from the crown to individuals in the New England colonies.<sup>3</sup>

### ORIGINAL SOURCE OF TITLE TO LAND

The original source of title to the New England soil, as in the other parts of the continent, was in the English crown which claimed it on the right of discovery and possession. The king was the immediate owner and lord of the soil and he exercised unlimited power in the disposition of it. He claimed also the right to establish local government and conferred powers of legislation upon his grantees. Thus, all titles to landed property in the New England colonies were derived originally from an actual or constructive grant of the English crown.

<sup>3</sup> In this outline, I have followed the treatment of the subject by Eggleston, *Land System of the New England Colonies*.

This theory of the British government and of the colonists that the absolute, ultimate title to land was in the sovereign, however, was subject to the right of occupancy of the Indian. This natural right of the natives was entitled to protection, but the sole right of acquiring land by purchase or by actual conquest from the Indians was in the crown or its grantees, and the natives had no right to dispose of it to no others. Thus laws were passed in all New England colonies, forbidding any purchase of land from the natives without license from the legislature. On the other hand, a grant of land carried with it the right to extinguish the Indian title as of course, and the colonists, sooner or later, did so extinguish the Indian titles. This was especially true in the seventeenth century, while in the later years the practice gradually died away.

While the crown's absolute claim to the title of the soil was generally accepted in theory, there were at first some variations in actual practice. The founders of the Narragansett Bay settlements recognized no other than the Indian title as original and absolute and the title to land rested solely upon the purchase of the native right. It was only after the royal charter was issued in 1663 that the title of the crown was recognized as valid. In Connecticut also the colonists held their land merely by *de facto* possession and native purchases until the granting of the royal charter in 1662, after which date the title no longer rested upon occupation and purchase.

#### ROYAL GRANTS

From the crown the land titles passed to the several colonial governments through grants made in the form of royal charters.

Before the creation of any colonial government, however, the Plymouth Company of 1606 was, with some changes



in the membership, made a separate body politic and corporate under the name of "The Council established at Plymouth in the County of Devon for the Planting, Ruling, and Governing of New England in America." The charter of 1620 granted to the new corporation the territory between the fortieth and forty-eighth degrees of north latitude, and extended throughout the continent. It was to be held as of "the manor of East Greenwich in free and common socage" and the company had the power to grant it to settlers. The customary right of trade and settlement, coupled with the power of legislation and government, were also given. The enterprise proved a failure and the Council surrendered its charter to the King in 1635. The importance of the Council for New England in this study is, not that it created any colonial government, but that it granted a number of land patents before the surrender of its charter, among which were some of great importance to which we shall return at a proper place.

Of the land patents granted by the Council for New England, perhaps the most important was that given to a company known as "The Governor and Company of the Massachusetts Bay in New England," which developed out of a trading company and which received a royal charter in 1629, confirming the grant of territory already made and adding thereto full governmental rights. Upon removal to America, it developed into a "corporate" or self governing colony and, in the course of time, it absorbed several independent grants. Most important of these was the royal grant to Sir Ferdinando Gorges, dated 1639, covering the tract of land called the Province of Maine, lying between the Piscataqua and the Kennebec, and extending inland one hundred and twenty miles, which was eventually sold to the Massachusetts Bay Colony in 1677. In 1691, the Bay Colony received a new charter by which it was constituted a Royal Province and its jurisdiction ex-

tended over what is to-day the States of Massachusetts and Maine. The Pilgrim settlement at Plymouth, after three futile attempts to obtain a royal charter, was included in the Massachusetts Bay Province thus reconstructed.

The colony of the River Towns of Connecticut, having been founded without a royal charter, attained its ultimate limits by expansion and by the absorption of two smaller settlements, the colony at Saybrook in 1644 and the New Haven Colony in 1662. No one of these three colonies existed by virtue of rights superior to its own. In 1662, the amalgamated colony was constituted a corporate colony by a royal charter under the name and style of "The Governor and Company of the English Colony of Connecticut, in New England, in America." The territory granted comprised what is now the State of Connecticut and also a part of New York.

The Narragansett Bay settlements, originally founded in strict conformity with the principles of Roger Williams, obtained for self-protection, its first charter from the Parliamentary Government of England in 1643, under the name of "The Incorporation of Providence Plantations, in the Narragansett-Bay, in New England." This received a royal charter in 1663, confirming the territory already occupied by the settlers. The territory thus confirmed substantially covered the present State of Rhode Island, and the colony was styled "The Governor and Company of the English Colony of Rhode Island and Providence Plantation, in New England, in America."

Under these royal charters the title conferred upon the respective colonies was invariably "as of the Manor of East Greenwich in free and common socage" on the condition of paying one fifth of the gold and silver found within the territories. The charters also granted to the respective colonies the exclusive right of acquiring or disposing of land; in Massachusetts the charter of 1691 specifically in-

vested this right in the "Governor and Generall Assembly" while in Rhode Island the General Assembly was given that power.<sup>4</sup>

The royal province of New Hampshire was erected by the King in 1679, subject however to the vested rights of John Mason in the soil. After the brief but tyrannical administration of Cranfield, the province was united to Massachusetts in 1685, but in 1692 it again became a separate Royal Province, sometimes under the joint rule of the Massachusetts Governors. There was no royal charter granted in this case and the title to land in the greater part of what was regarded by New Hampshire as her territory was uncertain. It was thus the constant source of trouble, mainly on account of the Mason claims and the boundary disputes on the south and the west. The power of granting land was vested by instructions in the Governor with the advice and consent of the Council.<sup>5</sup>

#### COLONIAL GRANTS

The next stage in the transfer of the title to land in the New England colonies was the colonial grants. The right to grant land was vested, whether by the royal charters or by the express action of the people, in the general court and all grants were made by that body, except in New Hampshire where the Governor was the principal figure.

The grants of land made by the general court, in general, took two forms: first, grants to individuals; and second, grants to groups of individuals. The individual grants which were made by the general courts were usually in the nature of pensions; salaries, gratuities, or for the encour-

<sup>4</sup> Thorpe, *Constitutions and Charters*, I: 530; III: 1848, 1870, 1883-1884; VI: 3208, 3213, 3221.

<sup>5</sup> For the historical treatment of land titles in New Hampshire, see Fry, *New Hampshire as Royal Province*, Chapter IV.



agement of some commercial enterprise. In Massachusetts they were generally in small tracts<sup>6</sup> and carefully located; in Connecticut there was greater freedom in regard to the location of such grants, allowing the grantee to choose the land wherever he pleased so long as it did not prejudice any former grant.<sup>7</sup> As we approach the end of the seventeenth century, individual grants by the general courts become less common, although they do not altogether cease throughout the colonial period.<sup>8</sup>

By far the most important method of disposing of the colony lands was by means of grants to groups or communities of individuals and the grantees became known, both in common and in legal parlance, as the proprietors whom we have already defined above. The objects of these community grants was the formation of new plantations and a township grant usually contained, with slight variations especially in the earlier years, a tract of six miles square. The grants were made generally upon petition and it was customary for the general court to appoint a committee to supervise the laying out of plantations. During the early period, the grants were described in the most general terms, without even a specification of their bounds; but soon more cautious rules were adopted and every grant was required to be surveyed and recorded before the transfer of title

<sup>6</sup> In Massachusetts, for example, between 1630 and 1655, there were nearly one hundred individual grants, averaging in size from 360 to 375 acres. No individual grant exceeded 3,200 acres and of these there were very few. Egleston, *op. cit.*, 19-20. In the eighteenth century, individual grants were still smaller, ranging between 100 to 200 acres. The situation was similar in the other colonies.

<sup>7</sup> Mead, *Connecticut as Corporate Colony*, 61; Andrews, *River Towns of Connecticut*, 37-38.

<sup>8</sup> As a typical example of these in the eighteenth century, see the grant to Francis Bernard: Sawtell, *Sir Francis Bernard and His Grant of Mount Desert Island*.

was finally consummated.<sup>9</sup> Even then, due to inchoate knowledge of geography and the unscientific method of surveying and of actually indicating the boundaries, boundary disputes were very common throughout the colonial period.

One of the characteristic features of these New England colonial grants has already been indicated. The colonial government invariably exercised a characteristically Puritan control in all its land grants, and the general court carefully superintended the surveying and laying out of lands and the founding of new plantations. The primary motive in making the land grants was the actual occupation and settlement of unoccupied lands and the colonies did not seek any profit from the public domain. The land was freely granted to those who petitioned for it, while the legislative conditions were always imposed for the actual occupation of the soil and for the provision of religious and educational facilities for the settlers. Moreover, no distinct land office nor any official definitely charged with the administration of the public domain was established by any of the New England colonies and the land was not sold by the colony; except in the case of certain islands and very rarely of some other tracts, land was never leased; nor did rents and alienation fines form any appreciable part of the colony's revenue.<sup>10</sup> It is true, as we shall see later, that, during the eighteenth century, land was granted less prudently and with more freedom, due mainly to the commercial and political influences of the time, and even whole townships were auctioned off in Massachusetts and Connecticut. But there is no evidence that the colonies aimed to obtain permanent revenue by selling or leasing the public lands. The last, but not least in its importance, is the

<sup>9</sup> The detailed description of the General Court's grants, together with the methods and processes followed, may be found elsewhere in the chapters following.

<sup>10</sup> Osgood, *op. cit.*, I: 428 and note 2.

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Puritan land tenure free from all feudal incidents and external control. Consequently, the proprietary tenure with royal quit-rent was never established in the New England colonies; even in New Hampshire, where it persisted in theory, the quit-rents were never successfully collected and the enforcement, if tried at all, ended in a failure.<sup>11</sup>

### TOWN OR PROPRIETARY GRANTS

The final stage in the transfer of the land titles lay in the town or proprietary grants. In the early years, as we shall see later, there was no distinction between the town and the proprietors, and the town handled the important work of granting lands in the town meetings. But gradually the proprietors claimed that power exclusively for themselves as belonging to the original grantees; and, particularly after their organization as independent bodies, they alone exercised the jurisdiction over the common and undivided lands in any township. In other words, it was through the town proprietors that the characteristic collective ownership of land in the New England colonies finally passed into individual ownership. As such the town proprietors occupied the most important place, possibly next only to the general court, in the distribution of land and the occupation of the frontier wilderness of the New England colonies.

It should be pointed out at this point that the New England town proprietors were the creatures of the colonial legislature which had the exclusive control over the granting of land and the founding of townships, and consequently they never formed a part of the imperial program, either in their creation or in their activities. Throughout the colonial period they enjoyed a complete freedom and

<sup>11</sup> Bond, *Quit-Rent System in the American Colonies*, Chapter II and pp. 51-61.



maintained a continuous independence from all external control, except that of the colonial governments.

The only connection which some of the town proprietors possibly had with the home government was through the channel of appeals to the King in Council. Due to the abundance and the entangled nature of legal cases arising from land troubles in the colonies, appeals were often taken to the King in Council. But all such cases were handled purely as judicial questions and in no case were either political or imperial questions raised. Moreover, the instrument of disallowance was not applied to the laws governing the town proprietors and their activities. There were numerous instances where the colonial laws affecting the right of private property were disallowed on the ground of infringing upon the English law; but laws governing the proprietors' organizations and activities were nowhere questioned.

### III

The purpose of the present study is to present an account of the development, organization, activities, and controversies of the proprietors of the New England towns. The subject will be divided, for the sake of clarity, into two parts, of which the first will be devoted exclusively to the institutional study of the town proprietors.

In the second part an attempt will be made to study the effect of land speculation upon the town proprietors in the eighteenth century. Incidentally we shall have the occasion to incorporate the story of the Great Proprietors or the Patentees under the Council for New England so far as they, together with the town proprietors, were imbued with the spirit of land speculation in the eighteenth century. However, it is not the purpose of the present study, as the title clearly indicates, to deal with this type of proprietors in any extended form simply because, as we have already

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pointed out, they were quite different in their institutional characteristics from the town proprietors. For the similar reason, merely a brief sketch will be given of the western claims in the pre-Revolution period.

An attempt will be made at the close of the study to unite into one bundle a few significant threads which grow out of the study. But this will be very general in its character, while each chapter will speak for itself on the significance of any particular phase.

## PART I

### THE TOWN PROPRIETORS

#### CHAPTER II

##### THE METHODS BY WHICH THE TOWN PROPRIETORS ACQUIRED TITLE TO LAND IN NEW ENGLAND

In transplanting the institution of the proprietors to New England towns, the Puritan leaders had no definitely preconceived plan, and the institution showed its own peculiar development until, toward the close of the seventeenth and throughout the following centuries, it became a well formulated basis of the colonial land policy. The story of this development is the story of the source of their title. A careful analysis seems to show that there were, historically speaking, at least four different methods by which the town proprietors acquired their title to land in New England colonies, namely, through occupancy or "squatting," purchase from the Indians, grant from the general court, and recognition of the native right in behalf of the Indians. Of these the third method became the dominant form, while the first two died out and the last was confined to the Indians themselves.

##### I. OCCUPANCY OR "SQUATTING"

Several of the towns which were first settled in Massachusetts and Connecticut, as well as those which later formed the united Colony of Rhode Island, were founded

by the spontaneous act of their settlers upon land to which they had no legal title until after the recognition by the colonial government or the extinguishment of Indian claims. Such for example were Salem, Boston, Cambridge, Watertown, Dorchester, Roxbury, and Weymouth in the Massachusetts Bay Colony, and Hartford, Weathersfield, Windsor, and New Haven in Connecticut.<sup>1</sup> Both in Massachusetts and Connecticut these towns were founded almost simultaneously under the pressure of necessity before the actual formation of any local governmental bodies and necessarily land was taken up without guidance from the general courts. In other words, there was as yet no definitely formulated land policy in the founding of towns and the proprietors in these respective towns owed no legal origin to any other organization than themselves.

Beginning as a fishing station on Cape Ann, and later, upon failure, removing to the present location without authority, Salem became a plantation of the newly organized Massachusetts Bay Company. Boston, Watertown, Roxbury, and Dorchester were first settled by those members of the company who came with Winthrop under the pressure of necessity; there was no time to wait for the permission from the Company or to ask for any specific grants of land and the groups settled wherever locations with favorable conditions were found. The case of Cambridge differed slightly but was similar in effect. It was founded by governor, deputy governor, and assistants as the capital of the Colony and its chief seat of defense. Weymouth, originally Wessagusset, was settled in 1623 by the "Old Planters" who, coming to New England with Capt. Robert Gorges, had established themselves without

<sup>1</sup> The Rhode Island towns will be treated elsewhere for reasons which will be made clear later. See the next section.



any color of legal right within the limit afterward assigned in the charter of 1629 to the Massachusetts Bay Colony.<sup>2</sup>

Although these towns were founded without authorization from the government of the colony, they were not permitted to enjoy their independence for any length of time. As soon as the General Court was fairly organized it began to assert that supervision over towns which became characteristic of the later New England land system. The first instance of this control was the action of the General Court in September, 1630, when it named Dorchester and Watertown by an order which declared "Mattapan shall be called Dorchester, and the town upon the Charles River Watertown."<sup>3</sup> This control was completed by 1636 when their powers were recognized by the General Court and the authority of the Court over them was fully asserted.<sup>4</sup> Even before this, in 1634, the General Court had asserted in a general township act that none but itself has power to dispose of land or give and confirm property rights.<sup>5</sup> Henceforward, these towns were subjected to the same rules and laws of the General Court and stood in same relation to that body as the later towns for whose inception the court was responsible.

The three original River Towns of Connecticut were founded on a similar procedure. The people who settled Hartford, Windsor, and Weathersfield came first to Massachusetts as groups of emigrants animated by a more or less common purpose and thence sought a permanent home in the Connecticut Valley. In both stages of their migration

<sup>2</sup> McLearn, *Early New England Towns*, Chapter I; Osgood, *op. cit.*, I:428; Adams, *Genesis of Massachusetts Towns*, 16-17.

<sup>3</sup> *Records of the Governor and Company of the Massachusetts Bay in New England, 1628-1686* (hereafter cited as *Mass. Col. Rec.*), I:75.

<sup>4</sup> *Ibid.*, I: 172; Osgood, *op. cit.*, I: 429; McLearn, *op. cit.*, 20ff.

<sup>5</sup> *Mass. Col. Rec.*, I, 117.



they acted without the sanction of the home government or the guaranty of any charter. Beyond the action of the Massachusetts General Court in giving them permission to remove, they were the squatters on an unauthorized territory and later established their title by purchases from the Indians. Four years after their settlement they formed a united government under the instrument known as the Fundamental Orders and the people gave to the General Court the exclusive control over all unoccupied territories. Henceforward the General Court alone exercised the supervision over the public domain and the three River Towns came under their jurisdiction, as others of the court's creation later.<sup>6</sup> The theocratic settlements at New Haven and its surrounding towns were originally founded in a very similar way to the three River Towns. The settlements were unofficial and independent of both the mother country and the other colonies. Their right at first was purely a squatter right and it was followed by the purchases from the Indians.<sup>7</sup>

In every one of these cases, then, the towns were originally established in an unofficial way by men possessed merely of the squatter rights to the soil. These original settlers or *squatters* became the nucleus of the latter proprietors in the respective towns. Upon extension of the power over them by the general court, they admitted newcomers as inhabitants and together exercised the exclusive control over the town land. At first these original settlers and the admitted inhabitants constituted the total population of any given township and the town was the medium through which all land questions were dealt with; selectmen were merely a committee of the proprietors to manage the prudential affairs of the town. In the course of time the

<sup>6</sup> Andrews, *River Towns of Connecticut*, 20-21; Osgood, *op. cit.*, I: 301ff.

<sup>7</sup> Atwater, *History of the Colony of New Haven*, Chapter V.

Puritan exclusiveness had manifested itself in the form of freemanship in the town affairs and of proprietorship in the land matters.

The idea of freemanship took hold of the New England towns immediately, but that of proprietorship was slow in its adoption. Thus, at first, there was no distinction between the proprietors and the town or other inhabitants. But that the original settlers and their associates were conscious of their right over the town land and that they had conceived of the exclusive control of the land by themselves, in much the same way as the principle of freemanship governed the political affairs of the town, is shown in their actions in the form of town votes. At Watertown, as early as 1635, it was ordered that

“No Foreiner comming into the Towne, or any Family arising among our selves shall have any benefit either of Commonage, or land undivided but what they shall purchase, except that they buy a mans right wholly in the Towne.”<sup>8</sup>

The division of land was accordingly made twice in 1636 and once in 1637, exclusively among the inhabitants who later became the original proprietors of that town.<sup>9</sup> At Cambridge also the inhabitants, original and legally admitted, only were allowed the right of commonage and after 1646 even the admitted inhabitants “were to have no rights of commonage by hire and those entitled to commonage were forbidden to sell their right.”<sup>10</sup> Likewise at Dorchester the original settlers and the admitted inhabitants alone claimed the right to deal with the town lands and in 1645, when they chose seven selectmen for the government

<sup>8</sup> *Watertown Records*, I: 2.

<sup>9</sup> *Watertown Proprietors' Records*, 1ff.

<sup>10</sup> *The Records of the Town of Cambridge in Massachusetts, 1630-1703* (hereafter cited as *Cambridge Town Records*), 12-13; Adams, *Genesis of Massachusetts Towns*, 25-26.

of the town, the proprietors cautiously limited the selectmen's power

“First that they shall not meddle with the giving or disposing of any of the Town land without the consent and good will of the Town first obtained: 2 neither shall they take upon them to alter any parcel of land from the present improvement without consent of proprietors or the proprietors shall do it themselves by the major vote being fairly proceeded in.”<sup>11</sup>

On the other hand, the proprietors gave to the selectmen

“all accustomed liberty concerning common Lands in Fence also our Town lots that they shall have power to enjoin the several proprietors to make and repair such Fence as is due unto them by proportion and upon default therein to charge such penalty upon them as they see meet.”

At Salem there were no less than ten Common Fields of associated “commoners,” or proprietors by 1640. These proprietors, as in the other cases, consisted of the original squatters and the admitted inhabitants and each common field was under the general supervision of the town which the proprietors created.<sup>12</sup>

In Boston, too, the “inhabitants” or the original settlers and the admitted newcomers were the sole nucleus of the later “commoners” and the “town” at first had the full power to dispose of the town land. Thus, in 1636, twelve overseers were empowered by the “written instructions” of the selectmen to “oversee, look into, and sett and order the final allotments.” They were sometimes known as the “allotters.” In 1641, the town ordered that “a general townsmeeting” alone had the power of granting lands and

<sup>11</sup> Adams, *Genesis of Massachusetts Towns*, 8, 13–14.

<sup>12</sup> Adams, *Village Communities of Cape Anne and Salem*, I: 37ff. For the limitation of the proprietors' numbers, see McLear, *op. cit.*, 102, 104–105.



it decided at a "general townsmeeting" to divide "the residue of the Town lands not yet disposed of" among "the present inhabitants together with such as shall be admitted within two months." At this time, then, it was the "inhabitants" who had shares in the common lands and there were no "commoners" or proprietors as such.

In 1646, the town again ordered that "all the inhabitants shall have equal right of commonage in the Towne" and "those that are admitted by the townsmen to be inhabitants." In addition it passed an important order which barred the inhabitants who are admitted in the future from the right of commonage except by hire and prohibited the present holders of such right to sell it, "but only to let it out to hier year to year." From that year the "inhabitants" who had shares in the common lands became slightly differentiated from the new comers on account of this limitation, but, in 1672, the right of commonage was extended so as to include all "residents in the Towne" in that year.<sup>13</sup>

In all of these towns, then, the squatters obtained their right from the general court after the actual settlement of the places and as original settlers they claimed the power to admit new comers. With this latter class they constituted the original "planters" or settlers and, being the sole owners of the town lands, became the nucleus of the later proprietors. However, the distinction between the proprietors and the town, as well as between the proprietors and the non-proprietor inhabitants, was vague and ambiguous until the beginning of the next century and the town meeting controlled the land policy within the township.<sup>14</sup>

<sup>13</sup> Peters, *A Picture of Town Government in Massachusetts Bay Colony at the Middle of the Seventeenth Cenntury as illustrated by the town of Boston*, 30, 32, 33, quoting town records. See also Osgood, *op. cit.*, I: 463.

<sup>14</sup> See below Chapter III "The Organization of the Town Proprietors."

## II. PURCHASES FROM THE INDIANS

The theory of the British Government and of the colonists in the occupation of the New England soil was that the absolute, ultimate title to land was in the Crown and that the sole right of acquiring it by purchase or by actual conquest was in the Crown or its grantees. This principle was strictly carried out as soon as the general court took charge of the land policy in the several colonies. However, during the earlier period, there were a few divergences from this theory and many town proprietors derived their right to the soil primarily from the purchases from Indians. This was particularly true in Rhode Island.

In Rhode Island, at least before the united government took control of its land policy, the title to land originated, in strict conformity with the principle of its founders, in the purchase from Indians and not in the Crown. It was the *purchasers* who became, in the course of time, the proprietors in the several Narragansett Bay towns. The spirit of individualism, moreover, dominated the founding of the original towns and, until the union of four towns in 1644, there was no supervision of the founding of townships as in the other New England colonies.

The evolution of the town proprietors in Rhode Island, particularly before the organization of the colonial government, starts invariably with the Indian purchases. At Providence, which may be taken as a typical example, the evolution of the proprietors may be traced in the following manner: (1) the Providence Purchase and the Pawtuxet Purchase which were made by Roger Williams in 1637 from Canonicus and Miantonomi, at first in accordance with the "treaties" or the understandings of the years 1634 and 1635 and later confirmed by a deed of March 24, 1638; (2) the formation, out of the few individuals collected at Providence, of a "Town Fellowship" of twelve men, thir-

teen including Williams, acting by mutual consent, upon the basis of the deed executed by Roger Williams; (3) the assignment to these original "purchasers" and such others, the so called "new comers," who in the meanwhile had been admitted into their fellowship, of land consisting of a five-acre "home lot," a "six acre lot," and a right to a sufficient amount of the general land to make a total of one hundred acres which became the basis of a full proprietary right; (4) the formal recognition by the fellowship, on May 29, 1643, of the conditional character of their grants, that of actual occupation. On Jan. 19, 1646, these original purchasers and proprietors granted twenty-five acres of land to the inhabitants as a concession and each inhabitant so granted was admitted to a quarter part of a proprietary share under the name of the "Quarter Right Man." By 1663, the number of proprietors having reached one hundred and one, the proprietors decided to admit no others and the separation between the proprietors and the other freeholders or inhabitants of the town was complete.<sup>15</sup> In short, deriving his title to land from the Indians, Roger Williams chose to resign in favor of a "Town Fellowship" any proprietary authority which might have been exercised by him alone and the members of the fellowship, with the admitted purchasers or "new comers" and "Quarter Right Men," became at the same time a freeholder possessed of a free hold estate and a shareholder in the yet undistributed part of the company's land.

In the other older towns in Rhode Island a series of similar evolutionary steps can be traced, always starting from the Indian purchases. At Portsmouth at least six stages are discernable in the evolution of the proprietors.

<sup>15</sup> Dorr, *Proprietors of Providence and their Controversy with the Freeholders* (in Rhode Island Historical Society, *Collections*, IX); Richman, *Rhode Island*, I: 85-94; *Providence Town Votes*, *passim*.



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These are: (1) The formation on March 7, 1638 at Providence of the political society of eighteen men to settle at Aquidneck; (2) the actual purchase of the island from the Indians on March 24; (3) the adoption on May 13, 1638, of the rule of limiting inhabitants and freemen to such as the "Bodye" should admit; (4) the assignment, seven days later, of house lots, mostly six acres in extent, to the original purchasers and others admitted since; (5) the orders made in various forms between 1638 and 1639 that lands not improved within twelve months should revert to the town but that compensation should be made for labor expended toward improvement; and (6) the orders of September 19, 1642, forbidding the sale of land to any outside jurisdiction or to Dutch settlers, and of December 23, 1644, declaring that "the right and privileges of the Lands undisposed of remains in the bodye of the freemen" and that "the freemen which are the possessors have only power to dispose of the lande that is to be disposed of."<sup>16</sup> Newport, originated by Coddington and his party who left the Portsmouth group in 1639, was founded in a very similar manner, while Warwick was founded in 1643 on the Shawomet and several other purchases, the purchasers agreeing that they would keep the disposal of land to themselves and the admitted purchasers, and that none shall enjoy the possession of any land "but by grant of ye owners and

<sup>16</sup> *Records of the Colony of Rhode Island and Province Plantation in New England, 1636-1792* (hereafter cited as *R. I. Col. Rec.*), I: 45, 52; Richman, *op. cit.*, I: 91-93. In 1684, the General Assembly declared that the land in Portsmouth and Newport belongs exclusively to all "freemen" and that they have "liberty in their public meetings to grant and dispose of the said undivided lands, according to their usual custom." (*R. I. Col. Rec.*, III: 155). Notwithstanding this order, the proprietary class of Newport asserted their right to the undivided lands in 1702 and the division was made exclusively among the heirs and assigns of the original proprietors of 1644. Richman, *op. cit.*, II: 50, footnote 2.

purchasers.''<sup>17</sup> In all of these cases, the purchase right was the legal right and the purchasers became the nucleus of later proprietors; the confirmation of their respective rights later by the central government added or subtracted nothing from that right.

In the Plymouth Colony, also, the purchase of land titles from the Indians was an important feature in the occupation of land. But there the purchasers did not enjoy the freedom of action which characterized the Rhode Island purchasers; all purchases were to be confirmed, sooner or later, by the General Court. On the other hand, it is curious to observe that here the purchase rather than the court grant or confirmation was important in the eyes of the purchasers, and the proprietors were organized on that basis, as the proprietors of Taunton North Purchase or the proprietors of Rehoboth South Purchase.

The ordinary process in the creation of proprietors under the Plymouth practice was, with slight variations, as follows: (1) the application to the Court for a permission to purchase; (2) the authorization of purchase by the Court, often appointing a committee to supervise the transaction; (3) the purchase from the natives by the adventurers, always with a deed but very ambiguous in boundaries; (4) the confirmation of the purchase by the Court; and (5) the actual occupation of the territory. Often purchases were made before the authorization of the purchase and the confirmation followed. This was particularly true in the period before the orders were passed prescribing the Court's permission for any purchase. After such a procedure the purchasers became the sole proprietors of the territory thus purchased and managed the affairs as any other proprietaries, though under the territorial juris-

<sup>17</sup> Fuller, *History of Warwick*, 10-14, 149. For the troubles which followed the Shawomet purchase, see Osgood, *op. cit.*, I: 345ff.



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diction of the General Court. The shares in the propriety were regulated in proportion to the money advanced in the purchases.

The typical examples of these Indian purchase proprietors in the Plymouth Colony are the proprietors of Taunton North and South Purchases,<sup>18</sup> of Rehoboth North and South Purchases,<sup>19</sup> and of Sowam.<sup>20</sup>

In the Connecticut Colony also, during the earlier period, the purchase from the Indians constituted an important basis of the proprietary right in many towns.<sup>21</sup> But, as in Massachusetts, the title primarily originated in the court grants and the Indian purchases were merely for the secondary purpose of extinguishing the native right.

The proprietors of the Indian purchases, however, belong to the earlier period of the seventeenth century; even then

<sup>18</sup> The Taunton Purchases were three in number. (1) The Titi-quet Purchase of 1639 with 46 purchasers who became the "first and ancient proprietors." Later it included the "Eight Mile Purchase" also. (2) The North Purchase, made in 1668, comprizing some 60 square miles, though vague in its boundary. (3) The South Purchase, consummated by the 87 purchasers in 1672. Emery, *History of Taunton; Quarter Millennial Celebration of the City of Taunton*, 29-77 and the Appendix for documentary materials.

<sup>19</sup> The Rehoboth Purchases were two in number. The South Purchase dates back to 1643 and the North Purchase was made in 1661 and confirmed by the Court in 1666. Dagget, *A Sketch of the History of Attleborough*, Chapters I and IV; Records of Rehoboth Proprietors and Rehoboth North Purchase, *Mss.*

<sup>20</sup> See Bicknell, *Sowam: with Ancient Records of Sowam and Parts Adjacent* (hereafter cited as Bicknell, *Sowam*).

<sup>21</sup> For example, there were at least nine purchases from Indians at Woodbury, Connecticut, but the Court grant preceded all. Cothren, *History of Ancient Woodbury, Connecticut, 1642-1854*, I., Chapter II. Guilford and Milford, Stamford and Greenwich, and Southhold on Long Island were originally started on the basis of purchases from Indians. But in all cases the Indian title was not of primary importance as in Rhode Island; it was done primarily for the sake of friendly relations.

they were limited to a small section of New England. The reason is not far to seek. As soon as the general court took control of the distribution of land and the founding of towns, it strictly applied the principle that all land titles should primarily originate in the Crown or its grantees. Consequently the colonial governments, through legislation, discouraged all purchases from the natives without license first obtained from the general court and declared null and void all deeds taken without permission. There was also a secondary object in such regulations, namely, not so much to restrict land policy as to "prevent misunderstanding, disputes and fraud in connection with the extinguishment of the Indian title to land, and also to prevent the undue dispersion of settlers."<sup>22</sup>

The Massachusetts Bay Colony led the way in 1634 when it ordered "that no pson whatsoeuer shall buy any land of any Indians without leaue from the Court."<sup>23</sup> This was reiterated by a more elaborate act of 1701<sup>24</sup> which declared, among other things, that all deeds of purchases from Indians made since 1633 without permission of the General Court "to be null, void and of no effect," that no future purchases be made without license from the court, that

<sup>22</sup> Osgood, *op. cit.*, I: 529-530. "These laws were passed," writes Perley, "for the protection of the Indians by securing them from deceit and impositions, and to enable the government to avail itself of the full benefit of the grant from the crown to themselves and their grantees, by giving them the exclusive privilege of extinguishing or acquiring the Indian right of occupancy." Perley, *Indian Land Titles of Essex County, Massachusetts*, 19.

<sup>23</sup> *Mass. Col. Rec.*, I: 112. Even before that date the orders of 1629, for example, encouraged the colonists to extinguish Indian titles after the general court grant to "avoyde the least scruple of intrusion." *Ibid.*, I: 394, 400.

<sup>24</sup> An act to prevent and make void clandestine and illegal purchases of land from Indians. *Acts and Resolves, Public and Private, of the Massachusetts Bay, 1692-1780* (hereafter cited as *Mass. Acts and Resolves*), I: 471-472.



the penalty for the violation of this rule will be a fine double the value of land or imprisonment for a month, and that all leases of land from Indians be approved by the court of sessions of the peace. This principle was subsequently re-enacted or amended slightly, being actually practiced till the Revolutionary period. From 1746-7 three guardians were provided to watch over the transactions.<sup>25</sup> In the Plymouth Colony the same principle was enacted into law in 1643.<sup>26</sup>

The laws of New Haven and Connecticut followed the same principle, but differed slightly from those of the other colonies in their application. They expressly provided for purchases, under authority from the general court, for the benefit of the whole colony. The New Haven law of 1639 authorized the purchase, upon the Court's permission, "in the name & for the vse of the whole plantatiō."<sup>27</sup> The first act of Connecticut, which was passed in 1663, declared<sup>28</sup>

"that no person in this Colony shall buy, hire or receiue as a gift or mortgage, any parcel of land or lands of any Indian or Indians, for the future, except he doe buy or receiue the same for the use of the Colony or the benefit of same Town, with the allowance of the Court."

The act of 1702 ordered that, when the land is granted by the General Court, such township alone has power to pur-

<sup>25</sup> *Ibid.*, II: 104; III: 306, 679; IV: 163-164, 530, 974; V: 175, 459, 1122.

<sup>26</sup> *Records of the Colony of New Plymouth in New England, 1620-1692* (hereafter cited as *Plym. Col. Rec.*), XI: 41. See also IV: 20, 45, 82, 109, 167, etc., for the actions of the Colony in purchasing lands for the individuals.

<sup>27</sup> *New Haven Colonial Records*, I: 27.

<sup>28</sup> *Public Records of the Colony of Connecticut, 1636-1776* (hereafter cited as *Conn. Col. Rec.*), I: 402. This was also the theory in Massachusetts but it was not so specifically stated.

chase of the Indians and that all other purchases are illegal.<sup>29</sup> The act of 1717 is very specific on this principle, declaring "that all lands in this government are holden of the King of Great Britain as the Lord of the fee; and that no title to any lands in this Colony can accrue by any purchase made of Indians . . . without the allowance or approbation of this Assembly . . ." <sup>30</sup> In 1772, the Court fixed the penalty for the violation of this act at £50.<sup>31</sup>

Even in Rhode Island, which was originally founded upon the principle that the Indians are the sole owners of the soil and that the purchase is the only legitimate basis of all titles to land, freedom of purchase was not long permitted to be practiced. Soon after the charter had become the instrument of government, the General Assembly, in 1651, forbade any one to purchase lands from the Indians without permission. The penalty for violation of this law was the forfeiture of the land in question to the colony, while an additional fine of £20 was affixed in 1658.<sup>32</sup> More elaborate laws, following in general the principles adopted by the other colonies, were passed in 1676 and 1727.<sup>33</sup>

Thus the purchase right in every colony became a matter of secondary importance as far as the legal title to land was concerned and the proprietors who owed their creation to the Indian purchases gradually ceased to spread until this method disappeared from the New England land system altogether. This is partially due to the strict en-

<sup>29</sup> *Conn. Col. Rec.*, IV: 397. Actual prosecution under this law is recorded in 1708. *Ibid.*, IV: 526.

<sup>30</sup> *Ibid.*, VI: 13.

<sup>31</sup> *Ibid.*, VI: 355-356. See also Connecticut Archives, Towns and Lands, *Mss.*, III: 144; IV: 66-68; V *passim*, for actual cases.

<sup>32</sup> *R. I. Col. Rec.*, I; 236, 403-404.

<sup>33</sup> *Acts and Laws of His Majesty's Colony of Rhode Island and Providence Plantation in New England* (hereafter cited as *R. I. Laws*): 148; *R. I. Col. Rec.*, IV: 396.

forcement of these prohibitory laws, which fact is clearly shown by the constant authorization of purchase in the earlier years and also by the recorded cases of refusal to confirm purchases made without authority. On the other hand, a grant from the general court ordinarily carried with it the right to extinguish the Indian title as a matter of course. Accordingly, the colonists, particularly during the seventeenth century, extinguished the native titles as far as possible.<sup>34</sup> Indeed, "the New England colonies followed very consistently the principle that the Indian right of occupancy should be extinguished, and since it was done very largely with the knowledge and consent of the general courts, the land frauds which were later committed in some of the other colonies do not appear among them."<sup>35</sup>

### III. GRANTS FROM THE GENERAL COURT

The squatter proprietors and the Indian purchase proprietors were limited both as to numbers and time. By far the more common and more universal method by which the proprietors acquired title to land in the New England colonies was the direct grant from the colonial governments. No sooner was the general court organized than it took control over the unoccupied land within the respective colonies and claimed the exclusive right to grant land and create townships. In the Massachusetts Bay Colony, as early as 1630, the Court declared that no person shall plant in any place within the limits of the patent without leave from the Governor and Assistants or major part of them.<sup>36</sup> In 1635, the Court decreed that "the major part" of the magistrates should have power from time to time to dispose of

<sup>34</sup> See for example, Perley, *op. cit.*; Wright, *Indian Deeds of Hampden County*. These will give collections of Indian deeds.

<sup>35</sup> Osgood, *op. cit.*, I: 530.

<sup>36</sup> *Mass. Col. Rec.*, I: 76.



the "sitting down of men" in any plantation and that none should go without leave from them<sup>37</sup> and in the same year the Court began to put that principle into practice by making a grant which later became Dedham.<sup>38</sup> The Connecticut General Court, until the charter was procured in 1662, derived its power directly from the people and in 1639, in their Fundamental Order, the people gave to the General Court the sole right to dispose of all public land. In Rhode Island a similar policy was followed after the union of the original four towns in 1644.<sup>39</sup>

The general court, in all cases, carefully supervised the granting of lands and the founding of towns. These grants were usually made in answer to petitions<sup>40</sup> from the actual or prospective settlers of a new plantation. If the petition was approved by the general court, a committee, consisting in most cases, though not in all, of residents and sometimes of the members of the court, was appointed to view the proposed location and to superintend the laying out of the plantation. This committee, after surveying and laying out the same, reported its proceedings to the court and the formal grant was made after the confirmation of the report. It was common for the general court to restrict the time in which the settlers should occupy and improve their

<sup>37</sup>. *Ibid.*, I: 167.

<sup>38</sup>. *Ibid.*, I: 156. See below for more detailed description of the founding of Dedham.

<sup>39</sup> Throughout the seventeenth century, however, there was very little occasion for the establishment of new towns in Rhode Island and the Colony had very little to do with the granting of land. In the actual management of their lands, the towns of Rhode Island pursued a more independent course than did those in the other New England Colonies. See Osgood, *op. cit.*, I: 435-436.

<sup>40</sup> Sometimes, particularly in early years, the General Court took initiative and granted townships without petitions from the prospective planters. See, for example, *Mass. Col. Rec.*, I: 103, 136, 149, 147, 236; *Conn. Col. Rec.*, V: 180; VI: 63.



grants; often, particularly in the eighteenth century, a certain number of families was required to inhabit the plantation within a specified time.<sup>41</sup> More independent action was taken by the towns in Rhode Island, as we have already noted, while in Plymouth and New Haven, a close connection between the colony and the town resulted in the confusion of actions and often the town's regulations appear in the colony records as colony deeds.<sup>42</sup>

All these steps sufficiently indicate the watchful care which the general court exercised in the founding of towns. At first, however, there was no well formulated system nor policy. It was the product of experience and we can see the development of that system through typical examples both from early and later towns.

Dedham, Mass., may be taken as a typical example of a grant during an early formative period when the well defined system of later years was not yet practiced. Nevertheless, it shows the orderly process by which New England proprietors were created. In 1635, twelve men petitioned for a grant of land and the Court complied with the petition but nothing was done till a year later. On September 8, 1636, nineteen men again petitioned and the Court accordingly granted a tract of five miles square "above the fall of the Charles River"; it was to be free from taxation for three years. Beyond these simple orders, even without a definite boundary of the plantation, there seems to have been no further action on the part of the general court, while the grantees proceeded to take possession of the township thus vaguely located. These nineteen original *grantees* were the sole owners of the township and they admitted additional members upon prescribed conditions of settlement from time to time. Immediately upon

<sup>41</sup> Egleston, *op. cit.*, 17-18; Osgood, *op. cit.*, I: 429-431, 434-435; Mead, *op. cit.*, 61-63.

<sup>42</sup> See Osgood, *op. cit.*, I: 434-435.

settlement, all settlers were given home lots, twelve acres for every married man or eight acres for every unmarried person, and it was agreed that no one should sell land without leave of the settling company. They held weekly meetings and managed the affairs of the township in a body until 1639 when a vote was passed in which it was recited, among other things, that, whereas it has been found that proprietors, in holding these meetings, "have wasted much time to noe small damage and business thereby nothing furthered," it is advisable to make choice of seven men to manage the affairs of the plantation. To them the proprietors delegated full powers to manage the town affairs, but they kept the land affairs to themselves. After 1643, the proprietors' meeting was practically the town meeting and it elected the selectmen who served as an executive committee of the proprietors. However, it must be clearly emphasized that there was no clear dividing line between the proprietors and the town as such; the same meeting served for the two purposes, while the proprietors tried to control the distribution of the common and undivided lands. By 1656 the proprietors agreed not to make any more grants of the common lands to strangers and to divide the land in the future on the basis of the then existing number of proprietors in proportion to the valuation of their respective property.<sup>43</sup> Thus, the grantees of Dedham, together with the admitted planters, constituted the later proprietors of Dedham, but in the early years there was no clearly defined distinction either between the proprietors and the town or the proprietors and the non-proprietor inhabitants.

<sup>43</sup> *Mass. Col. Rec.*, I: 156, 179-180; Adams, *Genesis of Massachusetts Towns*, 186-187; Mann, *Historical Annals of Dedham*, 10, 33; Worthington, *History of Dedham*, 17, 18; *Early Records of the Town of Dedham, Massachusetts* (hereafter cited as *Dedham Town Record*), Vol. I, *passim*.



Often, in that period, the procedure was still more irregular. The General Court controlled the planting of Agawam as early as 1633, when it limited the inhabitants to ten and forbade any person to settle there without permission first obtained from the Court. The next year, the plantation was named Ipswich and a committee of three members of the General Court was empowered to divide and allot land to any one whom "they shall thinke meete." The committee admitted the inhabitants and those to whom the committee granted land became the nucleus of the Ipswich proprietors.<sup>44</sup> Marblehead was made a plantation by the General Court in 1635 and no one was permitted to plant there without its permission.<sup>45</sup> The plantation of Winnacunnet, later Hampton, was granted to several petitioners in 1638 and a committee of three men were appointed "to assist in settling out the place of the town" and in proportioning the "several quantity" of land to each man or the settler-grantee.<sup>46</sup> In each one of these cases, there is no well defined system as yet, but the grantees alone invariably became the owners of the land and later the town proprietors.

Suffield, Mass., forms a typical example of a grant of a later period and of more definite steps in the creation of proprietors. In 1669,<sup>47</sup> the people of Springfield took the initiative in settling a township and in May, 1670, they petitioned the General Court for the grant of a township. The Court acted twice upon the petition and granted a tract of six miles square in October of that year

<sup>44</sup> *Mass. Col. Rec.*, I: 76, 103, 136, 149.

<sup>45</sup> *Ibid.*, I: 147.

<sup>46</sup> *Ibid.*, I: 236, 271.

<sup>47</sup> In 1660, the General Court granted a township at Stony River, consisting of seven miles square, on condition that the grantees should settle twenty families and a minister in four years. But none settled and the grant became void. *Mass. Col. Rec.*, IV-1: 423-424.

under the following conditions: that twenty families be settled in five years; that a minister be settled among them within the same period; that not more than eighty acres be granted to any one person until above twenty families are settled in the township; and that there be reserved for the use of the general court five hundred acres, of which one hundred acres be used for the building of the meeting house. The court appointed a committee of six men from among the petitioners to manage the prudential affairs of the new plantation, including the survey and the allotment of land among the grantees. The survey of the township was made during the subsequent year and the report of the committee was confirmed early in 1674. In the meanwhile, the above committee of the original grantees proceeded to distribute the lands to the grantees, ranging from forty to sixty acres to each, and added other settlers to whom they also granted similar amounts of land. These original and admitted grantees of land in the township, including the members of the committee, became the proprietors of all land in Suffield. In 1682, when the town was incorporated, there were one hundred and twelve proprietors in all, of whom sixty-two were head of families, and the number of proprietary rights remained the same ever since.<sup>48</sup> Thus, as in the other cases, it was the legal *grantees* who became the proprietors of Suffield.

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The settlement of Hadley, Mass., brings out, not only such details as the foregoing, in possibly clearer manner, but also the proprietors' covenant. A group of fifty-nine

<sup>48</sup> *Mass. Col. Rec.*, IV-2: 460, 469; V: 12-13; *Documentary History of Suffield*, 26-28, 46-52, 79-82. John Pynchon, in the name of the committee and the grantees, also purchased the territory from the Indians and each grantees paid 4d per acre before occupying his land. This was the only money paid for the grant and became the cause of inequality from the beginning in the Suffield propriety.



men from Hartford, Wethersfield, and Windsor, Conn., petitioned the Massachusetts General Court in 1658 for a grant of township in the Connecticut Valley. The General Court, acting favorably, granted the petition on May 19, 1658 and on May 28, 1659, appointed a committee of five men, three from Springfield and two from Northampton, to lay out the bounds of the township. This committee made its report on September 30, 1659, giving the exact location and the boundary of the grant. The report was subsequently confirmed and the grant was accordingly made. Before the General Court had acted upon the petition, however, the petitioners, to the number of fifty-nine names, signed an elaborate agreement or a plantation covenant on April 18, 1659, binding themselves before settling and defining their rights as well as responsibilities in the settlement. Among other things, they agreed to transplant themselves and inhabit on the land granted for the purpose, to pay for the land in proportion to the shares held upon purchase from Indians, to raise all common charges, to cultivate land according to each one's share, to draw lots for so many acres of home lot and meadows upon settlement, and to forfeit their respective rights in case of neglect to settle and pay the proportional part of the charges. Most important of all, they bound themselves by the fifth agreement "that no man shall have liberty to sell any of his land till he shall inhabit and dwell in the town three years; and also to sell it to no person, but such as the town shall approve on." These fifty-nine persons constituted the original proprietors of Hadley. By 1661, twenty-eight of them had settled in the township, while the remainder or their substitutes followed.<sup>49</sup>

<sup>49</sup> *Mass. Col. Rec.*, IV-1: 328, 268; Proprietors' Records of Hadley, 1665-1779, *Mss.* (hereafter cited as Hadley Proprietors' Records, *Mss.*), *passim*; Judd, *History of Hadley*, Chapter II, conveniently gives all documentary materials on the subject.

In Connecticut towns the process was much the same as in the Massachusetts towns.<sup>50</sup> Besides, these grants from the general court, we may note here also, in passing, that many towns branched off from the mother towns. This process was very familiar in the seventeenth century. In each of such cases, a group of people obtained the grant from the proprietors of the mother town first and then confirmation from the general court. The court usually confirmed the grant, often with an additional territory. Braintree from Boston, Deerfield from Dedham annex, or Enfield from Springfield are typical examples of such a process.<sup>51</sup> In this process, the grantees of the new plantation, as authorized by the proprietors of the mother town and confirmed by the general court, became the proprietors of the plantation; it was often a separation of the original proprietary body.

In all these cases where the general court granted new plantations, to which belong the majority of townships founded during the colonial period,<sup>52</sup> the land title invariably originated in the general court and the original grantees constituted the proprietors of the common and undivided lands. The extinguishment of Indian titles or the squatting on the ground did not entitle one to a proprietary right when the land was granted by the general court. The original grantees were the sole owners of the land within the township and together with those settler-inhabitants whom they admitted into their company they exercised an exclusive control over the town land. They alone had the

<sup>50</sup> Mead, *op. cit.*, 61–63. For actual examples, see *Conn. Col. Rec.*, I: 210, 224, 225, 253; III: 58, 217, 177–178.

<sup>51</sup> For other examples of this process, see McLear, *op. cit.*, 26–27; Andrews, *River Towns of Connecticut*, 75–81.

<sup>52</sup> For the townships granted during the eighteenth century, see below, Chapter VII, “The Speculative Town Proprietors of the Eighteenth Century.”



power "to give and grant out lands to any persons who were willing to take up town dwellings within these precincts and to be admitted to all the common privileges of the town."<sup>53</sup>

The grantee proprietors with their admitted associates formed a reasonably definite group in every town, but, since the grantees included all, or nearly all, the inhabitants of the town, the distinction between the proprietors and the town as such or between the proprietors and non-proprietors was very vague during the early years. Consequently, as we shall see later, the town meetings would be at the same time proprietors' meetings until the time when the proprietors organized themselves as a separate organization.

#### IV. THE SOURCES OF INDIAN TOWN PROPRIETORSHIP

The formation of Indians as proprietors in the New England colonies also had an evolution of its own. The first stage was the recognition and protection of Indian rights and property; the second stage was the establishment of a sort of protectorate over them; the third stage was the reservation or plantations for the exclusive use of the natives; and the last stage was the organization of the Indian proprietors in their respective plantations.

Although it was the theory of the British Government and of the English colonies that the ultimate title to land was in the crown, that title was subject to the right of the natives.<sup>54</sup> It has been already pointed out that the natural right of the Indians to land was respected by the colonists and the Indian titles were very generally extinguished under the supervision of the general court. Moreover, the

<sup>53</sup> Edward Johnson, *Wonder Working Providence*, quoted by Mc-Lear, *op. cit.*, 14.

<sup>54</sup> Egleston, *op. cit.*, 4-5.

Plymouth and the Massachusetts Colonies carefully provided by law for the keeping of bounds between the lands of the Indians—especially that which they planted—and that of the English. Both Colonies ordered that the corn lands of the Indians should be well fenced and that certain assistance might be rendered by the English in this work. The Connecticut Colony sought the same object by a general order forbidding any one to take away the corn or any other property including land “without ye owners consent . . . vnless it be by virtue of order from lawful authority.”<sup>55</sup> The English attitude toward the Indian property right was generally fair and these guaranties constitute the first step in the development of Indian proprietors.

For the next stage we must turn to Connecticut. One of the remarkable facts on the pages of New England history is the frequency of Indian troubles, both among the natives themselves and between English colonists and Indians. After a series of troublesome relations, the Connecticut Colony tried a sort of protectorate over the Indians. In 1655, the system of tributeship, which had been tried since an early date with varying results, culminated in the subjection of the Pequots and the Niantics directly under the government of the English. Two of their leaders were appointed as their governors respectively under the commissions issued by the New England Confederation. Special regulations were also issued for the government of these Indians and the governors were annually appointed, each with one or two Indian assistants. In 1661, two Englishmen were appointed under the title of overseers to assist the governors, and officials under this title continued thereafter to be annually appointed. They were to advise them

<sup>55</sup> *Plym. Col. Rec.*, XI: 143, 213, 219, 220; *The Colonial Laws of Massachusetts* (hereafter cited as *Mass. Laws*): 162; *Conn. Col. Rec.*, I: 355. Also Osgood, *op. cit.*, I: 532.



in their administration and see that the Indians were not deprived of any rights by their English neighbors. They might hear and decide all but capital cases among the Indians, and hear appeals from the decisions of the governors.<sup>56</sup>

While the system of protectorate was being worked out in Connecticut, the plan of reservations was already practiced in the Massachusetts Bay Colony. Due mainly to the missionary efforts of John Eliot, five chiefs with their dependants, who afterward settled at Natick, voluntarily submitted themselves in 1645 to the government of Massachusetts and came under its protection. Seven years later, in 1652, the general court established the rule that "what landes any of the Indians within this jurisdictiō haue by possession or improuement, by subdueing the same, they have just right thereunto" and "that if, vpon good experience, there shall be a competent number of the Indians brought on to ciuilitie, so as to be capable of a townshipp, vppon theire request vnto the Generall Court they shall haue graunt of landes vndisposed off for a plantation, as the English haue."<sup>57</sup> On this principle the general court began to create plantations exclusively for the Indians in 1653 and by 1665 there were six such plantations.<sup>58</sup> One of the cardinal principles in the founding of these plantations for the natives was that no land could be sold by the Indians except by the consent of the general court.<sup>59</sup> In order, therefore, to facilitate the transaction of land

<sup>56</sup> Osgood, *op. cit.*, I: 535-536.

<sup>57</sup> *Mass. Col. Rec.*, III: 281. The Indian title to land already possessed was always confirmed in plantation grant. *Ibid.*, III: 189, 233; IV-1: 102. The law of 1652 was questioned by the Royal Commissioners in 1665. See *Ibid.*, IV-2: 213ff.

<sup>58</sup> *Ibid.*, III: 301, 348; IV-1: 137, 192, 317, 363; IV-2: 109-110, 199.

<sup>59</sup> *Ibid.*, IV-1: 363.

matters and to supervise the plantation affairs, superintendents were thereafter appointed. These plantations were primarily made with a view to Christianizing the natives and became the homes of the "praying Indians." As such the system failed upon the outbreak of the King Philip's War.

After the war, the policy of the Massachusetts government became stricter, but it still retained the plan of Indian reservations. Thus, in May, 1677, the General Court enacted that all Indians who were permitted to live within the settlements of the colony, whether Christian or not, should be confined to one of the four plantations, namely, Natick, Punkapaug or Stoughton, Hassanamesit or Grafton, and Wamesit or Chelmsford. At the same time the Indians at Piscataqua in Maine were settled near Dover.<sup>60</sup> In these respective plantations, the Indians were subject to inspection, to be governed by such persons as the court or council should appoint, and a census of them was to be taken once a year. Among other things, they were restrained from carrying guns in the woods and strictly forbidden to entertain any strangers from outside the colony without permission.<sup>61</sup> In 1681, a new order was passed by which all Indians were confined to one of these plantations; in 1682, additional territory was given to several of them; and in 1684, a deed of conveyance was provided especially for the Indians, very similar to that of the English proprietors.<sup>62</sup> Henceforward, the Indians enjoyed the land and its cultivation within those plantations, under the supervision, however, of English overseers.

In the Connecticut Colony a similar system was adopted to complete the system of protectorate. Already in 1659, the Golden Hill reservation had been set off for the Pe-

<sup>60</sup> *Ibid.*, V: 136.

<sup>61</sup> See Osgood, *op. cit.*, I: 576.

<sup>62</sup> *Mass. Col. Rec.*, V: 327-328-329, 342, and 531-535, respectively.

quanock Indians on land which now lies within the limits of the city of Bridgeport. An addition was made to this reservation in 1680 for the benefit of the Indians of Milford. The reservation for the Pequots was made in 1667 and consisted of about two thousand acres of territory near New London. The Niantics were settled in 1683 in what is now the town of South Stoughton. This tract was not very large and was to be used by the Indians during the Court's pleasure.<sup>63</sup>

The Indians who were settled in these reservations or plantations enjoyed all the rights which the English settlers enjoyed in their township grants. The only difference was in the fact that the Indians were never possessed of the freedom of the English grantees; the natives were under the strict supervision of the colonial government and they could not even sell their land or proprietary right without the consent of the general court or its appointees. Otherwise, the Indians were guaranteed their proprietary rights and they became proprietors in every sense of the term within the limits of their plantations. They were even called the "Indian proprietors" in the official correspondence in 1688.<sup>64</sup>

However, the final stage in the development of Indian proprietors was not reached till the middle of the eighteenth century. This is not at all strange when we remember that not even the English proprietors were organized till the first quarter of the eighteenth century. The case of the Indian proprietors of Stockbridge, Mass., is a typical example of the last stage of this development.

The General Court, on December 29, 1749, declared that

<sup>63</sup> *Conn. Col. Rec.*, I: 336; II: 7, 55, 68, 81, 444-445; III: 8-9, 117, 125; *Plym. Col. Rec.*, X: 332; Osgood, *op. cit.*, I: 536.

<sup>64</sup> Col. Robert Treat to Sir Edmund Andros, May 23, 1688, in Massachusetts Archives, Usurpation, *Mss.*, CXI: 215. See also *Mass. Acts and Resolves*, XII: 180, 500.



“the Indians of the Housatonic Tribe, who were and have been settled as proprietors of lands within the township of Stockbridge, and their heirs and descendants, are and shall be a distinct propriety” and appointed Timothy Dwight to go and call a proprietors’ meeting. It was his duty to ascertain the number of proprietors and each proprietor’s portion, to call a meeting and choose the usual officers, to divide and distribute their undivided lands, and also to admit other Indians to the privilege of the propriety. A legal notice was posted at Stockbridge accordingly and Dwight organized the propriety. After two days’ careful investigations, he found that only thirteen of them, including Captain Konkopot, owned 1,670 acres and admitted sixty members, including four of other tribes. He then ordered the division of land by which ten received eighty acres, ten sixty acres, thirty-nine fifty acres, and one ten acres. Then the first meeting of the Indian proprietors, whose rights were thus defined, was organized and they managed their affairs under the supervisions of the three guardians who were appointed by the General Court.<sup>65</sup>

In all cases, the selling of land or the proprietary right was prohibited except under the permission of the general court, while the allotment and distribution of land among the Indian proprietors were supervised by the guardians appointed by the general court. These points were established by a series of laws both in Massachusetts and Connec-

<sup>65</sup> Canning, *Indian Land Grants in Stockbridge*, 47–48, 49–50, 52–54, quoting Massachusetts Archives and the proprietors’ records. See also *Journals of the House of Representatives of Massachusetts* (hereafter cited as *Mass. House Journal*), for June 22 and 28, 1737; for 1762, 28, 31. For the other Indian reservations, see *Mass. Acts and Resolves*, VII: 130; 322; 199, 218, 251, 320; *Mass. House Journal*, Dec. 3, 4, 1736; June 21, 1738.

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ticut.<sup>66</sup> That these laws were strictly enforced is clearly shown by the number of references to the applications and authorizations of land sales throughout the colonial period and also by the appointment of the "guardians" in Massachusetts and the "overseers" in Connecticut.<sup>67</sup> On the other hand, the Indian proprietors were a source of constant trouble, particularly in relation to the land transactions among themselves and with their white neighbors.

### V. COMPARISON OF THE SEVENTEENTH AND EIGHTEENTH CENTURY TOWN PROPRIETORS

If we now compare the proprietors of the seventeenth century and those of the eighteenth century,<sup>68</sup> a few general characteristic features stand out in contrast.

The first and most marked characteristic of the old town proprietors of the seventeenth century is the fact that, generally speaking, they were resident proprietors in direct contrast with the speculative and absentee proprietors of the eighteenth century. This was the natural result of many factors. The general court followed a prudent and cautious policy of granting land where there was an urgent necessity for actual settlement; its policy was dominated by socio-religious motives and there was as yet no indication of the commercial element in the township grant nor any speculative influence in land transactions. Then too, the settlements were effected "by congregations, by neighborhood, by families" and "the group was moved by an impulse which at the outset was shared by all or nearly all

<sup>66</sup> *Mass. Acts and Resolves*, II: 104, 363-365; III: 306, 679; IV: 163-164, 530, 974; V: 175, 459, 1122. *Conn. Col. Rec.*, X: 282, 306, etc.

<sup>67</sup> *Mass. Acts and Resolves* and *Conn. Col. Rec.* are full of these references.

<sup>68</sup> For more detailed presentation of the characteristics of the eighteenth century proprietors, see below Chapter VII "The Speculative Proprietors of the Eighteenth Century."



its members." Also, since they were pioneers in an unknown country and amid hostile Indians, there was a necessity for compact settlement for the purpose of defense and mutual comfort; the settlers were pioneers alike and shared the toil equally among themselves. The Puritan love of religion and education played an important part, while the common social impulse kept them together. Moreover, the new towns were often offshoots or extensions of the original centers, whether by the division of old ones or by the formation of new and remote villages. To crown it all, the general court had the complete control over the land questions and the details of the founding of towns. It was the first stage in the establishment of the new frontiers and the later "eastern men of property" were as yet toiling pioneers themselves, at least in the majority of the cases. Thus such terms as the "inhabitants," the "planters," the "settlers," and the "goers" were all used to designate the proprietors in the old towns.

It is true that there were non-resident proprietors in many towns, but it is also true that their number was comparatively small, almost negligible in the majority of the seventeenth century townships. Moreover, they were scattered in small numbers over many towns and the effect of their existence was little felt till later. In the cases where the new town was the offshoot of the original and distant center, as that of Braintree from Boston or Deerfield from Dedham, the evil effect of the absentees was felt and controversies followed; also on the frontier line along the Merrimac River where the Indians were constant menace the absentee proprietors existed. But these cases were exceptional. As the radius of the frontier line became wider toward the latter part of the seventeenth century, the non-resident proprietors began to increase and already at the close of the century absenteeism was becom-



ing a vexatious problem in itself, particularly with respect to the frontier settlers.<sup>69</sup> The proprietors of the eighteenth century are decidedly non-resident in this respect.

Another characteristic feature of the seventeenth century proprietors was the faint distinction between the proprietors and the town. When the original grant was made by the general court, the town and the proprietors were approximately the same; indeed, the town was no more than an instrument of government which was set up by the proprietor-inhabitants themselves. A town meeting was, under the circumstances, at the same time a proprietors' meeting. When the question of making land grants came up for discussion in the town meeting—for the land question constituted a very important business of the town meeting in the early history of towns—the town meeting was acting in the capacity of a board of proprietors. Until the definite organization of the proprietors in the following century, no record of the proprietors as such was kept and, consequently, the allotments of land and the regulations connected therewith were entered indiscriminately in the town record with the other forms of town business. The colonial governments,<sup>70</sup> too, recognized such a procedure as legal at first and the "town dealt with the land within the township without reference to the "proprietors," while the selectmen or the special committees acted as agent of the town in the surveying and allotments of lands. It was only from the close of the seventeenth century that the clear distinction was first made between the town and the proprietors and their respective functions were legally

<sup>69</sup> For some examples of absentee proprietors in the seventeenth century, see Turner, *First Official Frontier of Massachusetts Bay*, 263–265.

<sup>70</sup> See for example, the Massachusetts order of 1636 and the Connecticut orders of 1639 and 1643. *Mass. Col. Rec.*, 1: 173; *Conn. Col. Rec.*, I: 36, 101.

separated;<sup>71</sup> this distinction was completed in the eighteenth century.

Closely related to this lack of distinction between the proprietors and the town, is the fact that the proprietors of the seventeenth century had no legal proprietary organizations. In most of the towns the grantees included all, or nearly all, the inhabitants of the town and there was no necessity of protecting the proprietary right; there was indeed no problem. Moreover, as long as the town meetings and the town records safely served their purpose in every respect, the necessity of proprietary organizations was not felt. The exclusive character of the proprietors of the seventeenth century, on the other hand, emanated from within rather than from without; it was the consciousness on the part of the proprietors that kept them distinctly as an invisible privileged class, while those who were simply freemen or merely inhabitants were not vividly conscious of their difference. The proprietary position and rights and actions indeed, were a matter of tradition. But the growth of population gradually changed the whole situation. In the first place, it augmented the non-proprietor element in the town population, and the proprietors' control of the town meeting, even in the matter of land regulations, became weaker and weaker until the balance of power was decisively in favor of the non-proprietors. And, since there was no clear distinction, the town and the non-proprietors began to claim their right in the common and undivided lands. Then also, it increased the value of land and the common and undivided lands became the focus point of all eager eyes. The proprietors became alarmed and began to protect their right by all means. Thus it was only toward the close of the century that the general court

<sup>71</sup> For a more detailed account of this subject, see below Chapter III, "The Organization of the Town Proprietors."



for the first time began to legislate thereupon and in consequence the proprietors gradually took steps to organize themselves.<sup>72</sup> In the meanwhile, the proprietors of the seventeenth century remained unorganized.

Being actual residents and a more or less unified group, there was much more cooperative spirit among the proprietors in the seventeenth century than in the eighteenth century. This is clearly shown by the curious system of common fields. The proprietors owned in common and cultivated in common certain tract or tracts of lands which they set aside as the common fields. More often, when a given portion of common land had been divided among the proprietors, they allowed the land to remain in one common field and each owner improved his own part in his own way, *depasturing* the field after the crops had been removed. There were several of these fields in many old towns and each proprietor might be interested in several of them since his holdings were scattered over many fields. Thus arose the term "commoners," as we have already seen, by which the seventeenth century proprietors were more usually known. The commoners of each field regulated and settled all questions of cultivating and planting their common field, while they built fences around all common fields in proportion to their respective shares therein, usually under the supervision of the town and its appointees. The proprietors also pastured in common after the crops had been removed and they enjoyed the commonage of woods or stones. Everything was done in common, although it was based upon ownership in severalty. It was in connection with such a system of common fields that there arose any sharp division between the land community and the political community during the seventeenth century as at Cambridge

<sup>72</sup> See below Chapter III, "The Organization of the Town Proprietors."



and Salem; at Salem the commoners were even definitely organized from an early date in connection with each common field. The "commoners" and the "common fields," however, were characteristically seventeenth century affairs and gradually, if not completely, died away in the following century.<sup>73</sup>

<sup>37</sup> See below Chapter IV, "The Activities of the Town Proprietors." See also, McLear, *op. cit.*, 87-105; Osgood, *op. cit.*, I: 451 ff; Adams, *Common Fields of Salem*.

## CHAPTER III

### THE ORGANIZATION OF THE TOWN PROPRIETORS

#### I. THE EVOLUTION OF THE PROPRIETORS' ORGANIZATION IN NEW ENGLAND

The institution of the proprietors in the New England colonies is as old as the colonies themselves. Yet, their organization as a propriety, separate and distinct from the town corporate, dates from much later period.

Due mainly to the lack of distinction between the town and the propriety during the earlier years, the early history of the proprietors in their corporate capacity is buried in obscurity. In some cases the land ownership antedated the town organization, but almost universally the political and economic community developed together. Thus, although the distinction between the town and the propriety was generally observed in theory from an early date, they blended together in practice and the town meeting served at the same time as a proprietors' meeting. This was due in part to the fact that, in early towns, the inhabitants were all proprietors or there were very few who were non-proprietors, and in part to the important part which the business of land grant played in the early town meetings. In the former case the two bodies were substantially the same and naturally the questions relating to land and local government were discussed indiscriminately and one town record served for both; while in the latter case the town meeting, when the land questions were taken up, was turned

into a proprietors' meeting and acted as a board of proprietors.

It becomes significant that the towns kept, in the earlier years the entire power of disposing of the town land.<sup>1</sup> In the town of Plymouth it was always a principle, which was reiterated in 1657 and was in force until proprietors' meeting was legally called in 1682, "that all lands or pcells of lands that shalbee graunted to any within this towneship . . . shalbee graunted openly in towne meetings."<sup>2</sup> In Salem also, at least during the earlier years, the town exercised a similar power through its selectmen and committees.<sup>3</sup> In Boston the selectmen, under the authority from the town, made allotments; at times, commissioners were appointed by the same authority to divide and allot certain tracts of the town land.<sup>4</sup> Such was also true in Dedham where, as late as 1682, the proprietors refused to name a committee to manage the granting of land and vested the authority in the selectmen.<sup>5</sup> In Weymouth the management of the common was entirely in the hands of the town;<sup>6</sup> in Watertown the town managed the land until 1714 when the proprietors took the matter into their hands,<sup>7</sup>

<sup>1</sup> See Osgood, *op. cit.*, I: 462-464; Adams, *Genesis of Massachusetts Towns*, 8ff.

<sup>2</sup> *Records of the Town of Plymouth, 1636-1783* (hereafter cited as *Plymouth Town Records*), I: 35.

<sup>3</sup> *Salem Town Records, 1634-1680* (hereafter cited as *Salem Town Records*), in *Essex Institute Historical Collections*, IXL: 108, 109, 110, 114, 118-119, etc.

<sup>4</sup> *Boston Records and Book of Possessions* (hereafter cited as *Boston Town Records*), Boston Record Commissioners' Report, Vol. II, Part I: 3, 5, 9, etc.

<sup>5</sup> Mann, *Historical Annals of Dedham*, 20. *Dedham Town Records*, *passim*.

<sup>6</sup> Nash, *Historical Sketch of the Town of Weymouth*, 34, 50, etc. Adams, *Genesis of Massachusetts Towns*, 22-23.

<sup>7</sup> *Watertown Records*, I, *passim*; *Watertown Proprietors' Records*, 1ff., 151ff.



while in Cambridge the land was divided and allotted by the town and proprietors together in the town meetings.<sup>8</sup> In Duxbury, Hingham, Roxbury, Braintree, Topsfield, Groton, Woburn, Tynn, Ipswich, Newbury, and Rowley the town meeting and its appointees made or withheld all grants of land.<sup>9</sup>

The situation was very similar in the Connecticut towns. During the greater part of the seventeenth century it became customary in most of the towns in that Colony to make allotment of land and provide for the regulation of the undivided land in the town meetings.<sup>10</sup> In the original three river towns, for instance, the town meetings controlled the land question until the proprietors separately organized themselves to take charge of the town lands.<sup>11</sup> In Enfield the town meetings divided and allotted the land until 1711 when the proprietors organized themselves for independent action.<sup>12</sup> The regular town meetings freely granted lands in New Haven until 1685 when the General Court conferred that power exclusively to the proprietors.<sup>13</sup> The attitude of the General Court, moreover, seemed to confirm the view that the towns should have the power to regulate their

<sup>8</sup> *Cambridge Town Records* and *Cambridge Proprietors' Records*, *passim*. The town meetings and the proprietors' meetings were same for many years.

<sup>9</sup> Records of the respective towns. Osgood, *op. cit.*, I: 463; Adams, *Genesis of Massachusetts Towns*, 8ff.

<sup>10</sup> Mead, *op. cit.*, 64.

<sup>11</sup> Andrews, *River Towns of Connecticut*, 48ff.; *Hartford Town Votes*, I: 13, 15, 16-19, 21-24, 208, 209, etc. The proprietors and the town were same; in Wethersfield, the town overshadowed the proprietors; in Windsor, the proprietors overshadowed the town; while in Hartford, the balance was equally divided.

<sup>12</sup> Allen, *History of Enfield*, I (*Commoners' Book*): 96-99, 116, 283ff., 315, 681, etc.

<sup>13</sup> Blake, *Chronicles of New Haven Green from 1638-1862*; Gipson, *Jared Ingersoll*, 20.

common lands, at least during the early years.<sup>14</sup> In 1639, for example, in defining the power of towns, the General Court stated that the "Towns of Hartford, Windsor and Wethersfield, or any other towns within this jurisdiction, shall each of them have power to dispose of their lands undisposed of."<sup>15</sup> A similar view was again expressed in 1643.<sup>16</sup> Such was also true in the older towns in New Hampshire and until 1685 in Rhode Island.

As we approach the close of the seventeenth century, however, the distinction between the proprietors and the other inhabitants of the towns becomes more and more marked. The proprietors, the original settlers and their descendants, were relatively a fixed group and their number remained comparatively small. On the other hand, the number of inhabitants who were not descendants of the original settlers was constantly augmented by incessant immigration of new comers. Such an increase in the town population in turn increased the value of the town land in a direct ratio. As a result we find developing in most of the towns two distinct classes of inhabitants, the proprietors who had control over the land and the non-proprietors, the new comers, who had no such right. As the latter class increased in number, they would, in the natural course of events, sooner or later come to hold the balance of power in the town meeting and, as the administration of land had become a function of the town meetings, they would control the distribution of the undivided land. Accordingly the proprietors found it necessary to guard their right and the distinction between the civil and economic rights of the inhabitants gradually came to be established.

Such a separation of powers did not come at one time throughout the Colonies. In some towns it followed almost

<sup>14</sup> Mead, *op. cit.*, 64.

<sup>15</sup> *Conn. Col. Rec.*, I: 36.

<sup>16</sup> *Ibid.*, I: 101.

at the heels of the founding of the towns; in others it was deferred for several generations; and in still others it was compromised between the two parties.<sup>17</sup> Thus it was, that, earlier or later, the proprietors were definitely organized as a propriety, distinct from the corporate towns. Once separately organized the proprietary rights were generally recognized by the towns and the political and economic elements of the community were very clearly marked out. At Haverhill, Mass., for example, the town refused to act on a petition for a land grant in 1702 "because, not directed to the proprietors of lands but to the town, many of whom have no power to vote in the disposal of the lands."<sup>18</sup> At Wenham, Mass., when the proprietary rights were questioned, the town confirmed them.<sup>19</sup> In many towns, however, the rights of the respective parties were not so clearly understood. In the towns where the proprietors were still in the majority, no effective opposition was made to their claims; while in others where the non-proprietors equalled or outnumbered the proprietors, the pretensions of the latter were not quietly acquiesced in and numerous controversies arose, either in the name of the proprietors or the non-proprietors.<sup>20</sup>

<sup>17</sup> In Manchester, Mass., land questions were dealt with both at the town and proprietors' meetings. *Town Records of Manchester*, I: 21-27, etc. See also Worth, *Nantucket Land and Land Owners*, 187-188.

<sup>18</sup> Chase, *History of Haverhill, Massachusetts, 1646-1860* (hereafter cited as Chase, *History of Haverhill*), 205, quoting the town records.

<sup>19</sup> Allen, *History of Wenham, Civil and Ecclesiastical* (hereafter cited as Allen, *History of Wenham*), 50.

<sup>20</sup> See below Chapter IV, "The Controversies of the Town Proprietors."



## II. THE BOARD OF PROPRIETORS

The organization of the proprietors which was practiced in some towns from an early date seems to have been a matter of choice and was not rigidly carried out at first. At best the town meetings served their purpose, the propriety being nearly coterminous with the town. As the proprietors began to realize the importance of guarding and defending their rights, due to the reasons already described, the General Courts came to their rescue by passing laws and legally organizing them into an independent propriety.

The organization of proprietors became universal after 1682 in the Plymouth Colony and 1698 in the Massachusetts Bay Province. The General Court at Plymouth, in 1682, decreed that "Town should cause proprietors' meeting" in dealing with the division of land and provided further that "what shall be lawfully acted at such meeting by the proprietors, or the major part of them, shall be valid and binding."<sup>21</sup> The Massachusetts Act of 1698 legally authorized that a third part of the propriety "shall and may call and summon a meeting of the whole from time to time as there shall be cause."<sup>22</sup> Another fifteen years had to elapse, however, before a more detailed direction was given them. On March 25, 1713, the General Court provided a definite formula by "An act directing how meeting of proprietors of land lying in common may be called."<sup>23</sup> It decreed that "when five or more of the proprietors shall judge a proprietors' meeting to be necessary, they make application to the justices of the peace for a warrant for the calling of a meeting," designating time, place, and

<sup>21</sup> *Plym. Col. Rec.*, XI, Laws, 257.

<sup>22</sup> *Mass. Acts and Resolves*, I (*Province Laws*): 334, Sec. 3. As to the legal recognition of the proprietors' rights, see the Act of 1692 below, p. 74.

<sup>23</sup> *Mass. Acts and Resolves*, I: 704.

occasion thereof; that, when a warrant is issued, one of the proprietors thus asking or the clerk should notify the other proprietors concerning the meeting and should have the public notices of such a meeting posted fourteen days before the appointed day of the meeting; that the proprietors as assembled "shall have power, by a major vote," to choose a clerk to keep the records of the proceedings; and that they agree and appoint "any other way or method of calling or summoning the meetings for the future as shall be most suitable and convenient for the proprietors."<sup>24</sup> An additional act, which was passed in 1753, reiterated the original act, except for two things: it ordered that forty days notice of the meeting be placed in several Boston weeklies or newspapers, and that, besides a clerk, they were to choose such "other officers as are usually chosen by the other proprietries."<sup>25</sup>

The year 1713, then, is the dividing line between the legal and the traditional proprietors' meetings in the Massachusetts Bay Province and the proprietors in many towns accordingly proceeded to organize themselves. In Watertown, for example, the proprietors' meeting, though it had been held for over fifty years, was legally called for the first time in 1714 according to the act of 1713 and proceeded "to take a list of the Proprietors and their Propriete, so fare as may be known at Present, and to consider of claimes that may be made by any Person or Persons that may be doubtfull."<sup>26</sup> It also shows how doubtful the status and the membership of the proprietors were up to that time even in such a well organized ancient town as Watertown. In Lancaster the proprietors and

<sup>24</sup> The powers of such meetings will be discussed more fully as the study develops.

<sup>25</sup> *Mass. Acts and Resolves*, III (*Province Laws*): 669-670. This Act had a particular reference to the newly created towns.

<sup>26</sup> *Watertown Proprietors' Records*, I: 150, 151.

the town met together until 1716 when the proprietors organized themselves independent of the town, in accordance with the Act of 1713.<sup>27</sup> The first legal meeting of the Groton proprietors was not held until 1717,<sup>28</sup> while that of Deerfield proprietors was not organized until 1718.<sup>29</sup> In Cambridge the first legal proprietors' meeting was called in 1698 according to the first act. In each of these cases the proprietors' meetings had been held in conjunction with the town meetings in the preceding years but they were not legally recognized under the colonial laws. From the time the proprietors were legally organized the meetings and their records became of value, nothing else giving evidences of legal title to land at a later date.

In the Connecticut Colony the final and definite organization of proprietors was not authorized until 1723. The attitude of the General Court had been at first, as we have already seen, that the towns were empowered to regulate and dispose of the common lands. The first indication of a change of view on the part of the Court was in 1685 when patents were first issued to the various towns. In these patents it was conceded that the lands in the respective towns was granted "to the said proprietors inhabitants, their heirs and assigns."<sup>30</sup> In confirming the patents of several towns in 1703, the Court recognized the proprietary rights to land in even stronger words, that "all and every the several above mentioned lands with all rights and immunities contained in the above mentioned patent, shall be and remain a full and clear estate of inheritance in fee simple to the several proprietors of the respective towns."<sup>31</sup>

<sup>27</sup> *Early Records of Lancaster, Massachusetts, 1643-1725*, 5.

<sup>28</sup> Butler, *History of the Town of Groton*, 26, quoting the Groton Records. <sup>29</sup> Sheldon, *History of Deerfield, Massachusetts*, I: 495,

<sup>30</sup> *Conn. Col. Rec.*, III: 117. For possible reasons of such a change, see Mead, *op. cit.*, 67.

<sup>31</sup> *Conn. Col. Rec.*, IV: 443; Mead, *op. cit.*, 67.



Fourteen years later, in 1717, the proprietors of common fields were recognized as sole owners of all fields which at that time were considered common and they were empowered to choose a clerk "to enter all the acts and votes of the said proprietors, relating to the good management of the said common fields."<sup>32</sup> Three years later, in 1720, the General Court, in connection with the controversy in New London, had shown its final attitude in regard to the proprietors' right to land in any towns. It ruled that the patent to the town did "confirm the lands in said township to each and every proprietor in such towns, and to such as have any distinct propriety there though not living in such towns . . . also all lands not divided or disposed to hold as tenants in common; all of which undivided lands were confirmed to them, the said proprietors, their heirs and assigns, so that no person by becoming an inhabitant afterwards could have any right to dispose of any land in said town by voting in a town meeting." At the same time the General Court decreed that all titles to land which had been previously obtained by town votes were to be valid.<sup>33</sup>

The change was now complete on the part of the General Court and in May, 1723, it enacted "An act for the better establishing and confirming of the titles of lands . . ." After referring in the preamble to the "ancient" right of the towns to handle land questions in the town meetings and its vexatious result in the form of pretensions against proprietors' interest, it confirmed all those transactions already consummated. It then ordered that the proprietors should maintain their ancient rights and that

<sup>32</sup> *Conn. Col. Rec.*, VI: 25. An additional act was passed in 1721. *Ibid.*, VI: 276.

<sup>33</sup> *Ibid.*, VI: 189. For more detailed description of the contest and the general procedure of the General Court, see Mead, *op. cit.*, 67ff.

no new inhabitant should get such right without proprietary consent or grant; that they should have legal meetings in each respective town to choose a clerk "to enter and record their votes and doings"; and that they should have full power in such meetings "by their major vote to regulate, improve, manage, & divide such common land in such manner & proportion as they shall see good."<sup>34</sup> An additional act which was passed in October of the same year regulated how the meetings should be warned and held: when five or more proprietors shall see that such a meeting is necessary they should apply to assistants or justices of peace for warrant, stating the time, place, and business of the proposed meeting; warrant was to be issued by said authorities for such a meeting; notice for the meeting was to be posted in a public place at least six days in advance; the proprietors so gathered were to have full power to agree upon any other way or method of warning their meeting for the future as they think fit.<sup>35</sup> The proprietors, having thus carried their point, in many of the towns, especially in the older ones, took steps to organize themselves in a more permanent manner as did the proprietors in the Massachusetts Bay Province.

In Rhode Island the legal recognition of proprietors and their right to land was made much earlier than in any other Colony. The Assembly at Newport, in May, 1682, passed an act confirming to the proprietors, "their heirs & assigns forever" all lands in the enumerated towns "by virtue of any such purchase or purchases" which they might have made. It further recognized as legal, for the better management of their affairs, the meetings of pro-

<sup>34</sup> *Conn. Col. Rec.*, VI: 394-397. For legislative materials on this act, see Connecticut Archives, Towns and Lands, *Mss.*, III: 231 and IV: 76.

<sup>35</sup> *Conn. Col. Rec.*, VI: 424. Other additional acts were passed from time to time, to which we shall return later.



prietors "being convened by a warrant from under the hand & seal of an Assistant, or Judge of the Peace in such Towns" and authorized the proprietors, at such a meeting, to elect a clerk and other officers necessary for the work of the propriety and to order all business of the organization by a major vote.<sup>36</sup> In New Hampshire the proprietors' meetings were legalized in 1718 by "An act for the better regulating of town and proprietary meetings," the details of which were very similar to those of the other Colonies.<sup>37</sup> The next year the proprietors were empowered "to manage, improve, divide or dispose" of all the common and undivided lands by "the major part of such proprietors" to whom the lands had been granted.<sup>38</sup>

The proprietors thus organized formed a *quasi*-corporation. They held meetings regularly, distinct from the town meetings, and thenceforth controlled exclusively the regulation and disposal of the common and undivided lands.

The method of calling the proprietors' meetings was, in general, in strict conformity to the colonial laws. Such a process may be summarized as follows: a certain number of proprietors request the clerk of the propriety to call a meeting;<sup>39</sup> the clerk, or sometimes several proprietors themselves, then apply to the justices of peace<sup>40</sup> for a warrant

<sup>36</sup> Dorr, *op. cit.*, 107-109, gives a complete transcript of this law. In Providence, the proprietors were not separately organized till 1718. *Ibid.*, 126-127.

<sup>37</sup> *Documents and Papers relating to the Province and State of New Hampshire* (hereafter cited as *New Hampshire State Papers*), III: 738. May 14, 1718. <sup>38</sup> Feb. 8, 1719. 5 Geo. I., C. 87, s. 3.

<sup>39</sup> Five or more proprietors could call a meeting in Connecticut (Act of 1723). The same was true in Massachusetts by the Act of 1717 but it was changed to two or more persons in 1718. *Mass. Acts and Resolves*, II: 100. The proprietors made their own regulations in this matter.

<sup>40</sup> In Massachusetts the justices of peace alone had the legal power to issue such a warrant. In Connecticut and Rhode Island either Assistant or justices of peace had that power.



to call such a meeting, stating the time, place, and business of the proposed meeting; the said authorities accordingly issue the warrant authorizing the meeting; the clerk proceeds to post in advance<sup>41</sup> the notices of the meeting in public places in one or several towns or inserts them in the newspapers, according to the law in force, such notices always consisting of the warrant and the full details of the business to be transacted; then the proprietors meet on the date fixed at the place designated.<sup>42</sup> Sometimes, the application for such a warrant was made directly to the General Court, which body either authorized the meeting asked for or directed the proprietors to apply for one to the proper authorities according to the law.<sup>43</sup> The proprietors thus summoned and assembled were looked upon

<sup>41</sup> Six days notice in Connecticut (Act of 1723). In Massachusetts, fourteen days notice by the Act of 1713, thirty days by the Act of 1726, and forty days by the Act of 1753 (*Mass. Acts and Resolves*, I: 704; II: 408; III: 669).

<sup>42</sup> See the preceding section for the laws in several Colonies.

<sup>43</sup> This method was used: (1) for calling the first meeting in certain cases; (2) where the proprietors' clerk died or where there was no responsible person to act in his capacity; and (3) where there was no method provided for in calling future meetings. A few examples of each cases may be given. For (1), see *Mass. Acts and Resolves*, XII: 238, 294, 341, 551, 644, etc., for calling the first proprietors' meetings of the Canada Townships. Also Massachusetts Archives, *Mss.*, CXV: 210. For (2), see *Mass. Acts and Resolves*, XIV: 585, where the clerk died; Massachusetts Archives, *Mss.*, CXVI: 157-158, where there was no clerk. For (3), see *Mass. Acts and Resolves*, VI: 144, where the warrant was altered; *Ibid.*, XIV: 96, where no method for calling future meetings was provided for; *Conn. Col. Rec.*, VIII: 180-181, where legal proprietors' meetings was desired against the pretended meetings; Massachusetts Archives, *Mss.*, CXV: 241, no method for calling meetings. To remedy this situation, an act was passed in Massachusetts in 1774 ordering the "owners," in case the clerk died or otherwise disabled, to call meetings according to the Law of 1713. *Mass. Acts and Resolves*, V: 387-388.

as legally met and organized, and their transactions by their major vote were legal in every way in the eyes of the law; and affairs transacted in any other manner *ipso facto* had no legal force whatsoever.<sup>44</sup> As to future meetings, the proprietors in their legally warned meetings agreed, according to the law, upon the method of calling among themselves, usually by appointing a committee for the purpose or empowering a certain number of proprietors to request such a meeting.<sup>45</sup> These procedures, though troublesome as they seem, were carefully followed to an amazing degree of regularity in all New England Colonies.

The proprietors' meeting thus authorized was called regularly in all proprietries at least once a year, and its adjourned meetings were held almost monthly; in some cases meetings were held several times within a month or oftener according to the need of the time. Every meeting everywhere, when assembled, had two officers: the moderator who was usually elected at every meeting and acted as its presiding officer; and the clerk whose duty it was to appoint the place of meeting, to notify the proprietors to attend, and to keep the records of the proceedings both within and without such meetings. In some proprietries the attendance at the proprietors' meetings was compulsory

<sup>44</sup> See for example the Supreme Court opinions in *Pitts vs. Temple*, 2 Massachusetts 538 (1807) and *Woodridge vs. Proprietors of Addison*, 6 Vermont 204 (1834). In the latter case, the meeting not legally warned was ruled void; while in the former case, the grant of land made in a meeting not legally called was ruled void.

<sup>45</sup> Illustrations: clerk upon request of 5 proprietors at Savoy (Proprietors' Records, *Mss.*, 7); Committee of Five at Cohasset (Proprietors' Records of Conihasset Grant, *Mss.*, 199) and Keene (proprietors' record for June 27, 1734); committee of three at Saybrook, Conn., (Records of the Proprietors' Meetings of Potaugue Quarter, (hereafter cited as Saybrook Proprietors' Records, *Mss.*, 99); committee of ten proprietors at Windham, Me., (Dole, *Windham in the Past*, 15-16).



and even a small fine was imposed for non-attendance. The meetings were conducted in accordance with parliamentary order and the minutes were faithfully kept, particularly the votes and resolves.

The business of such proprietors' meetings at times took diverse forms. The Massachusetts Act of 1753, for example, defined the procedure as follows: to agree upon the method of calling future meetings; to choose clerk and other necessary officers for the management of the affairs of the propriety; to transact any of the business of the propriety, such as the division of land, provided that such matters are previously mentioned in the notices; and to levy taxes for the better carrying on of the work of the propriety.<sup>46</sup> In Connecticut, Rhode Island, and New Hampshire, besides the election of officers and provision for future meetings, emphasis was placed on the regulation, improvement, management, and division of the common and undivided lands.<sup>47</sup> Thus it was that, in the proprietors' meetings, officers were elected, by-laws were promulgated, taxes were levied, lands were divided and allotted, and general plans were formulated. In other words, these meetings were the only place where the business of the propriety could be legally transacted; it was a cabinet meeting and at the same time a clearing house. Generally speaking, however, the division and regulation of common and undivided lands were the main subjects at all proprietors' meetings and the propriety usually dissolved itself when its land was completely divided up among its members. Naturally the proprietors' records are mainly the records of land divisions and transactions, often being nothing else.<sup>48</sup> The proprietors' meeting, then, was a

<sup>46</sup> *Mass. Acts and Resolves*, III: 669-670.

<sup>47</sup> See the Connecticut Act of 1723, the Rhode Island Act of 1682, and the New Hampshire Act of 1719, already quoted.

<sup>48</sup> See below the section on proprietors' records.



miniature town meeting in which the focus of discussion was placed exclusively on land questions.

Aside from the business purpose of the proprietary meetings, it is important to note that they had also a social significance. The proprietors' meeting was, in many towns, the only occasion when a majority of proprietors assembled under one roof and naturally it was the scene of much merry-making. This was particularly true where the proprietors were scattered over several towns. Liquor was freely served and all kind of social gossip was passed around; at times even entertainments were furnished—all at the expense of the propriety.<sup>49</sup> Often the proprietors' meeting was but a social gathering, the business part being placed behind the scene under the guise of adjournment. Moreover, in order to make the meeting a success, both in its business and in its social aspect, the expenses of meeting as well as of travelling were often paid out of the treasury.<sup>50</sup>

The central figure in any propriety was the clerk. He was elected by the major vote at the proprietors' meeting and was duly sworn into the office for faithful service

<sup>49</sup> The proprietors of Newton Canada (Alstead, N. H.), for example, voted on Feb. 8, 1739, that "the charge of the meeting be born by the whole society" and that "there shall be no licker brought to the society that shall be charged for, but what is ordered by the Committee." Proprietors' Records, quoted in Society of Colonial Wars, Massachusetts, *Publications*, 1898, 206-207.

<sup>50</sup> The best example is that of Housatonic No. 3 where the expense of proprietors' meetings was regularly paid by the proprietors' treasurer: £2-2-8, £2-11-3, £3-17-0, £5-0-8, £16-0-8, etc. When the meeting was called in Woodstock in 1752, £52-16-6 were paid out as part of the travelling expenses. The Proprietors' Book of Records, *Mss.*, (hereafter cited as Housatonnoc No. 3 Proprietors' Records, *Mss.*), 24, 26, 28, 32, 33, 36, 57, etc. Similar example is Housatonic No. 1. The Proprietors' Book of Records for the Township No. 1 at Housatonnoc, *Mss.*, (hereafter cited as Houstonnoc No. 1 Proprietors' Records, *Mss.*) 26, 31, etc.

before a justice of peace.<sup>51</sup> The tenure of his office was not definitely fixed and usually lasted until another person was chosen by the propriety.<sup>52</sup> His duty was carefully defined by the several colonial laws, which were: to serve notices of the meetings to the members of the propriety; to record all acts and votes passed at all legal proprietors' meetings; to enter all divisions or sale of land with surveys and boundaries; to transact all the business of the propriety between meetings, unless otherwise stipulated, and to attend to the correspondence; and to represent the propriety at all occasions unless a special committee or agent is appointed in advance in his place. Naturally, in the absence of the office of presidency in all proprietries, he was the busiest person and, although he received no fixed salary, his services were often rewarded with land grants or a pecuniary honorarium.<sup>53</sup>

<sup>51</sup> Massachusetts Act of 1726 (*Mass. Acts and Resolves*, II: 407-408); Connecticut Act of 1717 and 1723 (*Conn. Col. Rec.*, VI: 25 and 424). A special formula of oath was provided for in the last act mentioned.

<sup>52</sup> The Connecticut Act of October, 1721, declared that clerk is lawfully in office until another person is legally chosen, though he is not elected annually. *Conn. Col. Rec.*, VI: 276. The Massachusetts Act of 1774 decreed that clerk chosen by the propriety should continue that office notwithstanding the completion of the final division of the undivided lands in order to give certificate of land deeds. *Mass. Acts and Resolves*, V: 387-388.

<sup>53</sup> For example: Proprietors' Book of Records for Upper Housatonnock, *Mss.*, (hereafter cited as Upper Housatonnock Proprietors' Records, *Mss.*), 36; Proprietors' Records of No. 9 or Murrayfield, *Mss.*, (hereafter cited as Murrayfield Proprietors' Records, *Mss.*), 77. The proprietors' clerk of such large and powerful organizations as the Great Proprietors became rich by serving that office. Dr. Sylvester Gardiner, treasurer and clerk of the Plymouth Company Proprietors at one time or another, is a typical example. Records of Proprietors of Kennebec Purchase, *Mss.*, II: 58, 81, 144, 215, 252, 260-267, 288, 350, etc.



Next only to the clerk in importance were the treasurer who controlled the purse string of the propriety and the surveyor whose duty it was to survey all divisions of the common and undivided lands. The surveyor was usually assisted by chainmen, both of whom served under oath and were paid by the day;<sup>54</sup> the treasurer was assisted in his work by assessors and collectors who were also under oath. From time to time, agents and attorneys were appointed to promote, to protect, and to prosecute in court the proprietary interests; this was especially the case when the proprietors were a party to a law suit or when encroachment upon the proprietary lands was rampant.<sup>55</sup> Watchmen were often appointed, particularly in the early years, to guard the right of the common field. At every proprietors' meeting a moderator was elected to act as chairman of the proceedings; outside of the meetings, however, he seems to have had no authority or responsibility.

Much of the business of any propriety was transacted and executed under the committee system. Most important of these was the standing committee of three to five members under some such name as "the committee to manage the prudential affairs of the proprietors." This committee, which was appointed in the majority of the New England propieties, acted, between meetings, as a board of repre-

<sup>54</sup> The proprietors of Rochester, Mass., have the following interesting vote. After ordering that the chainmen should serve under oath, it continued: "But those chainmen who are of the Denomination called Quakers, shall be only obliged to take a solemn engagement, instead of an oath to the faithful discharge of their said Office, Before one of his Majesties Justices of Peace, in order to Qualify them to act as Chainmen." Rochester Proprietors' Book of Records, *Mss.*, II: 25. May 17, 1738.

<sup>55</sup> The Great Proprietors always maintained agents and attorneys and they were almost always paid by land. The Masonian Proprietors, it has been already noted above, reserved in each grant two law lots to reward their two attorneys in advance.



sentatives and passed upon all pending affairs in conjunction with the clerk of the propriety. The committee to regulate the division of land or to lay out divisions existed almost universally, being appointed from time to time, and its members, cooperating with the surveyor and chainmen, had charge of the important work of dividing and allotting land; they were all paid usually by the day. Other committees were appointed for divers purposes, from time to time, to carry on work of minor routine.<sup>56</sup>

### III. MEMBERSHIP

The membership in any propriety was definitely determined by law or by proprietary votes; it was carefully limited to the proprietors of common and undivided lands, their heirs, assigns, or successors.

In the first instance the proprietors became members of a propriety by virtue of being the original grantees under the colonial seal or the original purchasers from Indians through the approval of the respective colonial governments of a tract of land or township which they held in common.<sup>57</sup> By the same patent or deed, their heirs, assigns, or successors were given the same powers by right of inheritance. Thus in the later times the personnel of any propriety consisted of the heirs and assigns or the successors of the

<sup>56</sup> The committee created by the proprietors of Woodbury, Conn., from time to time, may be taken as typical. They had at one time or another the committees on the management of the prudential affairs of the proprietors, on encroachment, on fences, on highways and roads, on proprietary rights, on selling lands, on exchanging lands, on divisions and lay out of land, on rate, on the prosecution of legal suits, on procuring ministers, on mills, etc.

<sup>57</sup> Sometimes the proprietary right was withheld from the original grantee when the latter neglected to pay the required charge to the committee of the General Court or to file a necessary bond when it was so required.

earlier members. The Massachusetts Act of 1723 emphatically assigned the right of any deceased proprietor only to his heirs, even if there was no will provided for.<sup>58</sup>

While this was true in theory, the theory did not agree with the practice in many of the older towns. Through lack of record in some towns and from the fact that the town and proprietors were coterminous in earlier years, it was impossible to discover who were the original settlers or admitted proprietors or even the original grantees. In such cases the taxable inhabitants, either land-holders or house-holders, at a given time were admitted as proprietors.<sup>59</sup> Often a committee was appointed at the time of the definite organization of the proprietors to investigate, receive claims, and determine the number of rightful proprietors.<sup>60</sup> Furthermore the proprietors themselves, in their legal proprietors' meetings, not infrequently added to their

<sup>58</sup> June 17, 1723. *Mass. Acts and Resolves*, II: 284-285.

<sup>59</sup> Mead, *op. cit.*, 68-69. In Manchester, Mass., the body of proprietors was fixed by a town vote in 1695, ordering that "all such persons having any perticular Lott or Lotts farme or farms granted by ye towne of Salem or Manchester living in our towne of said Manchester before the year 1662 hath A Comon Right" and that "No one else shall have any proprietary or interest in said Comon Lands." *Early Records of the Town of Deerfield*, I: 62-63. In Hartford, Conn., the number of proprietors was decided to be 95 in 1639, being "legal inhabitants" who have borne town charges, not necessarily "original purchasers" or "first settlers." Love, *Colonial History of Hartford*, 119-120, quoting Town Records (I: 21-24). In New London, Conn., such persons as were land-holders in 1685 when the town patent was granted were considered by the Act of 1704. Caulkins, *History of New London*, 263. In Guilford, Conn., the town in 1697 fixed the body of proprietors as those that were settled planters in 1686. Steiner, *History of the Plantation of Menunkoyuck and of the original Town of Guilford, Connecticut*, 174.

<sup>60</sup> In Enfield, Conn., (originally granted by Massachusetts), for example, upon separation from the town and the definite organization of the proprietors in 1711, a Committee was appointed "to



members. Thus the original proprietors of Providence, R. I., voted in the "Second Comers" and later the "Quarter Rights Men" to enjoy their privileges.<sup>61</sup> The proprietors of Colchester, Conn., voted to add some twenty-four names to the list of proprietors in 1713.<sup>62</sup> In Waterbury, Conn., the proprietary rights were conferred upon "young men that desire to settell in ye town" and came to be known as the "Bachelor Proprietors" in contradistinction from the original or "Grand Proprietors."<sup>63</sup> In Ipswich, Mass., the admitted proprietors were known as the "New Commoners" while the original proprietors called themselves the "Old Commoners."<sup>64</sup> Sometimes, the payment of a

examine the Committee Book of Grants in order to ye finding out who are the Commoners of Enfield." The Committee reported 55 names as authentic Commoners and the proprietors voted that "This list shall pass as a just list of Commoners, except any person agrieved & make his application to the proprietors." New members were admitted from time to time. Allen, *History of Enfield*, I: (*Commoners' Book*), 682, 683-684; 687, 688, 697, 734, 737, etc. A similar committee appointed in 1734 in Wells, Maine, reported and the proprietors approved that every person having a house and land in the town should be a proprietor. Bourne, *History of Wells*, 656, quoting the proprietors' records. In Watertown, Mass., when the proprietors were legally organized in 1714, a committee was appointed to determine who were the proprietors. *Watertown Proprietors' Records*, I: 150, 151. Similarly the list of proprietors in Dorchester, Mass., was determined in 1713. Massachusetts Archives, *Mss.*, XLV: 418-425.

<sup>61</sup> The former enjoyed the full rights, while the latter were given "a free grant of 25 acres of land apiece with right of commoning according to the said proportion of land." Dorr. *op. cit.*, 32-33, 90, 91. *Providence Town Votes*, III: 20.

<sup>62</sup> Mead, *op. cit.*, 69, foot note 2.

<sup>63</sup> *Proprietors' Records of the Town of Waterbury, Connecticut, 1677-1761* (hereafter cited as *Waterbury Proprietors' Records*), 44ff. The Bachelor Proprietors did not have any voice, however, in granting land.

<sup>64</sup> *Ipswich Proprietors' Records*, in *Essex Institute Historical Collections*, LVIII: 151-152.



certain sum into the proprietary treasury was a condition upon which new members were admitted.<sup>65</sup> At times, as a result of controversy between proprietors and non-proprietors, the proprietors often compromised their exclusive contention by admitting a certain number of inhabitants who held land at the time.<sup>66</sup> Moreover, the proprietary rights were purchasable and many became proprietors by virtue of purchasing the original proprietary right. This was more universally the practice among the speculative proprietors of the eighteenth century.<sup>67</sup> In any of these various cases, the admitted proprietors were given full proprietary right unless otherwise so stipulated, and enjoyed all the privileges and powers of the original proprietors.

Together with the power of thus admitting new members, the proprietors also possessed the power of excluding members from the propriety. The most common and universal case was that in connection with delinquency. The delinquent proprietor's rights, when he neglected to contribute to the necessary expenses of the propriety or refused to fulfill the conditions of grant, were sold off in accordance with the law and the purchaser was admitted in his place with full right. These cases were more numerous during the eighteenth century when the spirit of speculation dominated the proprietary transactions.<sup>68</sup> Sometimes the break-

<sup>65</sup> In Egremont, Mass., the proprietors granted the proprietary right for the payment of money, as 30s, £1-2-6, £1-5-0, etc. Proprietors' Records of Egremont, 1757-1862, *Mss.*, 9-10, 11, etc. The New Marlborough (Massachusetts No. 2 in Berkshire County) proprietors followed a similar step, however upon condition that they should settle in the township. £15, £17-4-0, £16, £21, etc., were paid and persons were admitted accordingly. Proprietors' Records of New Marlborough, 1737-1790, *Mss.* (hereafter cited as New Marlborough Proprietors' Records, *Mss.*), 21.

<sup>66</sup> See below Chapter VII.

<sup>67</sup> See below 210ff.

<sup>68</sup> See below Chapter VII.

ing of a proprietary covenant or an action repugnant to the interest of the propriety resulted in expulsion of the victim. These occurred, however, very rarely.

Such being the status of membership, the New England propriety early became an exclusive organization in at least two important senses. In the first place it only included the legally created or admitted proprietors, excluding the bulk of town population; the contrast in this respect became clearer as the town population increased. Then there was a tendency among the proprietors themselves to limit their membership at an early date, leaving it relatively a small body and very likely to be dominated by narrow and selfish traditions. This was particularly true of the proprietries which were founded before the passage of general laws defining the proprietary rights. In Dorchester, Mass., for example, no inhabitant could become a proprietor after Jan. 18, 1635, when it was ordered that "all the home lots within Dorchester Plantation which have been granted before this present day shall have right to be commoners and no other lots that are granted hereafter to be commoners: also that two shall not common for one home lot."<sup>69</sup> In Cambridge, Mass., the proprietors agreed in 1664 "that no more proprietors shall be allowed without a unanimous consent."<sup>70</sup> In Boston, Mass., it was voted by the freemen in 1646 "that all whom the townsmen had admitted to be inhabitants should have equal right of commonage, but that those who should thereafter be admitted inhabitants should have no right of commonage unless they hire it."<sup>71</sup> Similar orders were passed in Watertown, Mass., in 1635<sup>72</sup> and in Cohasset, Mass., in 1649.<sup>73</sup> The Sowams proprietors

<sup>69</sup> *Dorchester Town Records, 1632-1691*, 14; McLear, *op. cit.*, 102

<sup>70</sup> *Cambridge Proprietors' Records*, 144.

<sup>71</sup> *Boston Town Records*, II: 88. May, 18, 1646.

<sup>72</sup> *Watertown Records*, I: 2. Nov. 30, 1635.

came to an agreement in 1660 "that none of us shall at anytime Let or sell any of said lands to any stranger that is not allready a proprietor with us without the Joynt Consent of us all."<sup>74</sup> In many towns the proprietors "covenanted" themselves on a similar principle at the time of their creation.<sup>75</sup> In other words, the power of admitting new members was practiced with caution and, with a few exceptions, the number of proprietary shares or rights remained relatively the same throughout the life of a propriety, being however divided into smaller fractions with the increase of descendants.

In the townships where the area was large or where the geographical divisions formed a natural barrier for united action, the proprietors were often organized into two or more independent groups for the sake of convenience, each holding separate meetings and keeping a separate record. A typical example is the division of the proprietors in Springfield, Mass., where, in 1714, fifteen years after the original organization of the proprietors, the township was divided into two "Commons" and henceforward the proprietors of the "Inward Commons" and the "Outward Commons" met separately and kept separate records.<sup>76</sup> At Saybrook, Conn., the township was divided into three

<sup>73</sup> *Cohasset Town Records*, 7. March 1, 1649.

<sup>74</sup> Bicknell, *Sowams*, 40, quoting the agreement of Dec. 25, 1660, from the proprietors' records.

<sup>75</sup> See for example: Proprietors' Records of Hadley, *Mss.*, 246-251; Cothren, *History of Ancient Woodbury*, I: 39-41, quoting proprietors' records; Williamson, *History of the City of Belfast in the State of Maine*, I: 64; Tucker, *History of Hartford, Vermont*, 42-43; Chase, *History of Chester, New Hampshire*, 4; Bicknell, *Sowams*, 34, 35, 40, 41-42.

<sup>76</sup> See the respective records: Proprietors' Records of the Inward Commons of Springfield, 1713-1813, *Mss.*, 3 Volumes, and Proprietors' Records of the Outward Commons of Springfield, 1699-1799, 2 volumes, *Mss.*



quarters and the proprietors were organized into three respective groups: the Oyster River Quarter, the Polapauge Quarter, and the East River Quarter.<sup>77</sup> The proprietors were more often divided into several groups according to the several divisions of commons and meadows.<sup>78</sup> In this case, however, they kept one record which covered all.

As a result there were in nearly every New England town two general classes of inhabitants, as well as other minor distinctions. The first group was the proprietors, who constituted a landed class, more or less conservative in sentiment. The other group was the non-proprietors and included among them freemen of the Colony, admitted inhabitants but non-freemen, and transients. By the second decade of the eighteenth century such distinction was practically complete and the friction between the two bodies was not infrequently due to such an undemocratic division in the life of a small town.<sup>79</sup>

#### IV. RIGHTS AND PRIVILEGES

One of the outstanding powers of the proprietors, as it has been already noted,<sup>80</sup> was the exclusive power to deal, both in divisions and sales, with the common and undivided

<sup>77</sup> *Saybrook Land Records*, I: 93, 94.

<sup>78</sup> As in Hadley, Mass., where there were several divisions according to the different divisions of land, such as "Inner Commons," "Field of Hawkanum," "Fort Meadow," etc. Proprietors' Records of Hadley, *Mss.*, 251, 384, 388, *et passim*. At Salem, Mass., there were ten such divisions as early as 1640. Adams, *Village Communities of Cape Anne and Salem*, 37ff. See also Andrews, *River Towns of Connecticut*, 68; McLear, *op. cit.*, 87ff.

<sup>79</sup> See below Chapter V, "The Controversies of the Town Proprietors."

<sup>80</sup> We have already seen that this power was exercised by the town or proprietors in the town meetings in the earlier years when there was very little, if any at all, distinction between the two bodies. See above 50-52.

lands. This privilege, which forms the *raison d'être* of all proprietries, was granted to them by the patent or charters of the land grant. But it became confused with the general town privileges and it was necessary for the respective Colonies to define the power. In Massachusetts that power was legally guaranteed to the proprietors by the Act of 1692.<sup>81</sup> Among other things it provided that "the proprietors of the undivided and common lands within each town and precincts in this province, where same have been heretofore stated, each one's proportion being known, shall and hereby impowered to order, improve or divide in such way and manner as shall be concluded and agreed upon by the major part of the interested . . . And the proprietors of all undivided common lands not stated and proportioned as aforesaid, shall and hereby impowered to manage, improve, divide or dispose of the same as hath been or shall be concluded and agreed on by the major part of such proprietors." The subsequent Acts of 1698 and 1713 recognized this point emphatically. In 1698 it was decreed that the major part of the proprietors in any general field is empowered to lay down and dissolve the general field at pleasure and that such land shall be divided and improved by the major vote upon six months notice to all the proprietors.<sup>82</sup> The Act of 1713 added that, upon legalizing the proprietors' meetings, the proprietors at their meetings shall have the sole right "to pass order for managing, improving, and dividing such common lands not before stated and divided."<sup>83</sup> In other words, these laws legalized the custom which was already being practiced.

In Rhode Island the recognition of the exclusive right of proprietors to deal with the common and undivided lands preceded that of Massachusetts by ten years. The

<sup>81</sup> Nov. 16, 1692. *Mass. Acts and Resolves*, I: 64-68.

<sup>82</sup> June 21, 1698. Section 5. *Ibid.*, I: 333-335.

<sup>83</sup> March 25, 1713. *Ibid.*, I: 704.

Act of 1682 confirmed to the proprietors, their heirs and assigns forever, "their several and representative rights and interests" to all common and undivided lands "by virtue of any such purchase or purchases" and empowered the proprietors alone to manage and divide all remaining common and undivided lands.<sup>84</sup> In Connecticut the similar rights were confirmed to the proprietors alone by the Act of 1717.<sup>85</sup> The Act of 1723 reiterated the same principle in detail, confirming exclusively to the proprietors the "ancient rights" of regulating, improving, managing, and dividing the common and undivided lands by the major votes according to their interest in the common lands "in such manner and proportion as they shall see good" and ordering that no new inhabitant can procure such a right without the proprietors' general consent or grant.<sup>86</sup> Likewise the New Hampshire Act of 1719 declared that "the proprietors of the common and undivided lands, when the same have been heretofore stated, shall be and hereby are empowered to order, improve, or divide in such way and manner as shall be concluded and agreed upon by the major part of such proprietors."<sup>87</sup>

The proprietary rights, both in the divided and undivided lands, or proprietary possessions might be freely sold or transferred.<sup>88</sup> In the earlier years, however, such a free-

<sup>84</sup> Dorr, *op. cit.*, 107-109. May 3, 1682.

<sup>85</sup> *Conn. Col. Rec.*, VI: 25.

<sup>86</sup> May 9, 1723. *Ibid.*, VI: 394-397. The preamble pointed out how the town exercised that right in the earlier years by the consent of the proprietors. At the same time, it called attention to the fact that "the properties and estates" were confirmed by "deeds and patents" to the proprietors by the Colony. It thus legalized the customary practice of the proprietors during the earlier years.

<sup>87</sup> *New Hampshire Laws*, 230-237 (5 Geo. I, C. 87, s. 3)

<sup>88</sup> There is no specific law on this subject. The power to alienate seems to have emanated from the general laws which recognized the exclusive proprietary powers. In Connecticut, for example, a trans-



dom was often restricted, particularly when the town had jurisdiction over the land. This was in harmony with the Puritan restriction over freemanship and it emanated from the desire to prevent undesirable persons from becoming landholders and possible inhabitants of the town. In Connecticut a law of 1659 specifically provided that no person should sell his land until he had first offered it to the town in which the land lay and the town had refused to purchase it.<sup>89</sup> The General Court of Massachusetts did once raise the question whether the towns could restrain individuals from selling their own lands or houses, but no action is recorded and the subject was left to the towns. Accordingly the town in Massachusetts and Connecticut controlled and restricted even the proprietary alienation of land in the early times,<sup>90</sup> and proprietors in many towns were not permitted to dispose of their land at will. The need for such regulations in the later years was not felt as at first and the restriction became either obsolete or eventually disregarded. In the eighteenth century, after the proprietors took charge of their common and undivided lands and their exclusive power over land was legally recognized, the freedom of alienation of proprietary right and divided lands was universally recognized.<sup>91</sup>

In order to assure their exclusive power over the common and undivided lands and to enable them to carry on the necessary work for the betterment of their interests, action made under the Act of 1723 was affirmed in 1729. *Conn. Col. Rec.*, VII: 243.

<sup>89</sup> Osgood, *op. cit.*, I: 351; Mead, *op. cit.*, 78; Egleston, *op. cit.*, 40.

<sup>90</sup> See Mead, *op. cit.*, 78-79, and Egleston, *op. cit.*, 40-41, for examples.

<sup>91</sup> One rare case is the proprietors of Hopkinton, N. H., where no proprietor had the liberty to sell his lots or property right without leave obtained first from the propriety. This vote was dissented to by the Massachusetts General Court. Lord, *Life and Times in Hopkinton*, 15, 17.

the proprietors were possessed of the necessary corporate powers. Such were the power to levy taxes, to sue and to be sued, to make by-laws and orders, and to annex penalties. The right of inheriting all proprietary rights, thereby perpetuating the proprietary interests, lay at the basis of all corporate powers and it solidified the proprietary right against the non-proprietors.

The power to raise money by taxation, to be assessed proportionately upon several proprietary rights, was granted to the proprietors for the purpose of improving or settling their lands and defraying the incidental expenses of the propriety. Instead of levying taxes, the practice was also universal for the propriety to sell land for the same purpose.<sup>92</sup> In either case it was done in the legally warned proprietors' meeting or its adjourned meeting by the major vote of the proprietors, the warrant or notices calling the meeting always stating that fact in advance. This power, as in the case of proprietors' meetings, had been practiced from an early date while the laws confirmed and legalized the practice.

In the Massachusetts Bay Province several attempts were made prior to 1726 to confirm to the proprietors the power of taxation but all failed.<sup>93</sup> Beginning with the year 1726, however, a series of acts was passed granting that power to the proprietors. The Act of 1726 empowered the proprie-

<sup>92</sup> In some cases the application was made by the proprietors to the General Court to authorize them to sell a certain tract of land for that purpose. This was generally granted. In the case of the Indian proprietors, as in Massachusetts, they were always required to do so and the General Court always granted their request, sometimes appointing a committee to aid them so that they would not become victims of fraudulent transactions. See for example, *Mass. Acts and Resolves*, XI: 311, 317, 360, 449, 452, 547, 566, 602; XII: 93, 150, 326, 336, 514; XIII: 62, 96, 133, 213, 249, 534, etc.

<sup>93</sup> *Mass. House Journal*, II (Ford Edition): 250, 257, 261, 285, 287, etc.

tors to raise money for the prosecution of law suits involving the propriety;<sup>94</sup> the general Act of 1741 confirmed the same power to the proprietors in general terms, declaring that the proprietors at their legally warned meetings, by the major vote, are empowered "to raise tax or sum of money for the necessity of the common field";<sup>95</sup> and the Act of 1753, in regulating the proprietors' meetings, gave the proprietors the right to levy taxes, proportionate to right, "for bringing forward and completing the settlement of such common lands, and for the prosecution or defending any lawsuits for or against such proprietors, and for carrying on and managing any other affairs for the common good of such proprietries."<sup>96</sup> Under these several laws the offices of treasurer, assessor, and collector were also legalized and they were required to serve under oath. In the Plymouth Colony the laws of 1662 and 1665 empowered proprietors to raise money,<sup>97</sup> while the Connecticut Act of 1727 confirmed that power to them, emphasizing that it should be done "by the major votes."<sup>98</sup> In Rhode Island and New Hampshire a similar power was derived from the general laws which empowered the proprietors to manage and divide their common and undivided lands.

The power of taxation, however, was a dangerous as well as necessary power. It was not easy to apply it in practice in many of the New England proprietries and to do so often stirred up controversies. This was particularly true among the speculative proprietors of the eighteenth century whose main interest was in the profit of land speculation and who were mostly absentees. Delinquency was the natural result and it became one of the grave problems

<sup>94</sup> Dec. 31, 1726. *Mass. Acts and Resolves*, II: 407-408.

<sup>95</sup> Aug. 8, 1741. *Ibid.*, II: 1066.

<sup>96</sup> June 19, 1753. *Ibid.*, III: 669-670.

<sup>97</sup> *Plym. Col. Rec., Laws*, 142 and 211.

<sup>98</sup> October, 1727. *Conn. Col. Rec.*, VII: 137-138.



which many proprietries had to face and upon which the General Courts were called upon to legislate. Generally speaking, the proprietors were able successfully to enforce their power as they were backed by the General Court and its statutory provisions, by adopting the drastic measure of selling all delinquents' lands and rights.<sup>99</sup>

In as much as the proprietary existence was bound to the land transactions and the land was the source of constant law suits in the New England Colonies, the proprietary power to sue and to be sued was an important corporate power both as a weapon of self defense on the part of the proprietors and as a means of redress on the part of the non-proprietors. In Massachusetts it was confirmed by the Act of 1694, by which the proprietors were empowered to "sue, commence, and prosecute any suits or actions in any court proper to try the same, either by themselves or their agents."<sup>100</sup> This was reiterated in 1726 when it was further added that writs should be served thirty days before the trial.<sup>101</sup> Similar laws were enacted in the other New England Colonies, thereby applying the legal procedure to the final determination of land disputes.<sup>102</sup> It was through this power to sue that many of the proprietries maintained their title to disputed lands which is very characteristic of all colonial grants; on the other hand, it proved to be a source of undue domineering power in some proprietries.<sup>103</sup>

<sup>99</sup> The subject of delinquency will be dealt with in full elsewhere. See below, 224-229.

<sup>100</sup> *Mass. Acts and Resolves*, I: 182. Oct. 25, 1694.

<sup>101</sup> *Ibid.*, II: 407-408. Dec. 31, 1726.

<sup>102</sup> *New Hampshire Laws*, 582-591 (4 Geo. I, C. 79); Connecticut Act of 1734 entitled "An act for the better enabling of . . . proprietors in common and undivided lands to maintain, recover, and defend their grants . . ."

<sup>103</sup> See below Chapter V, "The Controversies of the Town Proprietors."

The statutory authority of the proprietors in making by-laws or orders of their own seems to have been limited to the Massachusetts Bay Province. That power was given to the proprietors by an Act of 1727. By the same Act the proprietors were empowered to annex penalties in enforcing their votes and orders. In practice similar power was exercised by the proprietors of the other New England Colonies. In all such cases the power was derived from the general laws already referred to, giving proprietors the right to divide and manage their common and undivided lands.

Under these several laws, then, the proprietors were possessed of practically all the important corporate powers and it was through the strength of such a legal backing that they accomplished their task of transferring the land titles from group ownership to individual ownership.

## V. PROPRIETARY RECORDS

In the early years there were no proprietors' records as such. The proprietors seem to have cared very little about their records and the complete record of their proceedings was kept in very few towns. In some cases a few lines were entered in the town records, intermingled among the proceedings of the town. In other words, during the period when the town and the proprietors were coterminous, there was no need of separate records and what the town or proprietors voted in the town meetings were recorded as town votes and were kept as such in the town records. If the proprietors attempted to keep any record at all, it was very meagre.

When, however, the proprietors were organized separately and entered upon an independent career, they began to see the value of keeping their own records. Thus, the separate records of the majority of the proprietors, even

if they were founded during the second quarter of the seventeenth century, do not begin until the close of the century. After the Acts of 1698 and 1713 in Massachusetts, when proprietors were legally authorized to organize themselves, the proprietors' records seem to have been kept almost universally where there was an organization. As we have seen already, the proprietors' clerk was ordered to keep the minutes of all proprietary meetings, of proprietary votes, and land divisions. The Massachusetts Acts of 1774 required, not only the records of the meetings and the proprietors' transactions, but also of the lands "after they have made a full and complete division of their land lying common and undivided." It further empowered the proprietors' clerk to recover all proprietary records and to issue attested copies of deeds as they are recorded in the proprietors' records. In the other New England Colonies, the laws legalizing the office of proprietors' clerk also required the records to be kept by him. Sometimes specific cases were dealt with by individual legislations. Thus, in Connecticut, soon after the confirmation of New Fairfield in 1736, the General Court passed an act empowering the clerk to record all "deeds, mortgages and other instruments as the town clerks have in their government." <sup>104</sup>

The records thus kept by the proprietors' clerk took two forms: (1) the minutes of meetings and (2) the book of grants. Generally speaking, the minutes of meetings and proprietary votes are very brief and often very scanty, while the book of grants constitute the bulk of proprietors' records everywhere. In the latter are to be found detailed descriptions of all proprietary land grants, together with the surveyor's reports.

The importance of the proprietors' records are self evi-

<sup>104</sup> *Mass. Acts and Resolves*, V: 387.



dent. In the New England proprieties, as we have already seen, land was divided among proprietors or granted to others by a mere vote at any legally warned proprietors' meetings, and surveying and drawing of lots completed the transaction. The only evidence of this important transaction was the proprietors' records in which were the proprietary votes on the division and the careful descriptions of lots as they were submitted by the surveyor. In other words, the only means by which any proprietors' property could be certified as authentic was through the proprietors' records.

It is true that most of the land deeds were recorded at the county registry. But the titles to land always run directly from the proprietors' records, not from the registry. This was the interpretation which the courts later gave in connection with innumerable legal cases involving these land transactions. Thus, in 1807, the Massachusetts superior court ruled that<sup>105</sup>

“all the titles, which have been derived from the proprietors of townships, have nothing better to depend upon than a vote recorded in the proprietors' books; and when a possession was taken in conformity to the vote, and transmitted by the grantee to his heirs or assigns, titles so acquired have been respected and maintained in our courts of law.”

In 1813, it maintained that the proprietors' records and certificates therefrom constitute the chief evidence in any land transactions.<sup>106</sup> Two years later it declared that the proprietors' vote recorded in the proprietors' book is the sufficient proof of land division even if there is no deed therefor.<sup>107</sup> In 1851, in the case of the Inhabitants of

<sup>105</sup> *Adam vs. Frothingham*, 3 Massachusetts, 360. (1807)

<sup>106</sup> *Codman et al vs. Winslow*, 10 Massachusetts, 146. (1813)

<sup>107</sup> *Inhabitants of Springfield vs. Miller*, 12 Massachusetts, 415. (1815)

Gloucester v. Gaffrey, the court held that "an ancient vote of proprietors of common lands, granting the same, was *prima facie* evidence of title."<sup>108</sup> The New Hampshire superior court also maintained similar opinions on the value of the proprietors' records.<sup>109</sup>

Such being the value of the proprietors' records, the clerk was under oath during his tenure of office, and treacherous clerks were often dismissed from the office. For example, the proprietors' clerk of Upper Housatonic was dismissed from the office in 1749 upon a charge of fraudulent actions and the proprietors declared "null and void all the votes divisions & transactions" which were recorded by the said dismissed clerk to that date.<sup>110</sup> At Athol, Mass., a certain Joseph Lord was the proprietors' clerk and treasurer for twenty years, but he absconded with all proprietary records in 1760 when another clerk was elected in his place. The proprietors then petitioned the General Court for relief, stating that "the petitioners are thus deprived of their records, and those who held their several possessions or original proprietors or have purchased the lands of delinquent proprietors left without their proper and needful proofs, and are in the utmost danger of running into total confusion." The new clerk accordingly was authorized to start a new record from all the evidences and

<sup>108</sup> 8 Allen, 11.

<sup>109</sup> See for example: Colburn vs. Ellenwood, 4 New Hampshire, 99; Atkinson vs. Bemis, 11 New Hampshire, 44. In the latter case, a copy of proprietors' records from their book was declared to be *prima facie* evidence of title against any claimants or trespassers. For similar opinions see also: Green vs. Putnam, 8 Cushing, 21; Baker et al vs. Falls, 16 Massachusetts, 497.

<sup>110</sup> It was charged that the proprietors' clerk denied and debarred several of the proprietors from their claims by not recording the same in the record books. Upper Housatonnock Proprietors' Records, Mss., 33, 34.

memory of the time of Lord, which record was to be confirmed by the major vote of the proprietors.<sup>111</sup>

<sup>111</sup> *Mass. Acts and Resolves*, IV: 860-863; XVI: 597-598. Massachusetts Archives, *Mss.*, CXVII: 578-580; CXVIII: 95-97, 116-117.



## CHAPTER IV

### THE ACTIVITIES OF THE TOWN PROPRIETORS

The activities of the town proprietors may be conveniently divided into three main groups, namely, (1) the settlement of townships, (2) the division of land, and (3) the practice of the common field system.

#### I. THE SETTLEMENT OF TOWNSHIPS

In the settlement of townships the proprietors acted in three capacities, as builders, as settlers, and as capitalists. As builders of towns the proprietors were responsible for the general plan of the township or village. Next only to the surveying and the division of lots according to shares, the very first subject which was taken up in the first proprietors' meeting was usually the general plan of the town—the main highways and roads, the town center or common with burying ground, the streets, the arrangement of home lots, the farms, and the pastures. Committees were appointed for the respective works and surveyors executed the plan by the help of paid chainmen and assistants.<sup>1</sup> Whatever the expenses the work required the proprietors liberally voted at their meetings.

<sup>1</sup> For example, the committee to lay out town plot at Norfolk, Conn., was paid 3s 6d a day. Norfolk Proprietors' Records, 1754–1856, *Mss.* (hereafter cited as Norfolk Proprietors' Records, *Mss.*), B: 14. At Savoy, Mass., a similar committee received 2s 10d a day. Savoy, Massachusetts, Proprietors' Records, 1771–1791, *Mss.*, (hereafter cited as Savoy Proprietors' Records, *Mss.*), 11.

The first vital necessity in building a township on the frontier was provision for the means of communication with the older and more settled districts. When we remember that the majority of townships were created on the frontier, we realize that the problem of constructing highways was important as well as difficult and expensive project. In the old towns this was under the charge of the town. But in the newer towns on the frontier, the proprietors were the only responsible body to execute the work for the incorporation of the town came much later. Thus the proprietors of many towns were willing to undergo the troubles and expenses so as to provide the settlers with ample means of communication with their home towns. The proprietors of Lebanon, N. H., cooperating with the proprietors of Lyme, Hanover, and Norwich, built in 1761-1763 a highway connecting Charlestown on the south and Norwich on the north.<sup>2</sup> The proprietors of Keene, N. H., or Upper Ashuelot, constructed a highway through Swanzey or Lower Ashuelot to Townshend in Massachusetts.<sup>3</sup> The proprietors of Hartwood in western Massachusetts built a highway connecting it with Becket (No. 4) and Pittsfield (Boston No. 3),<sup>4</sup> while the proprietors of Upper Housatonic (Great Barrington) built one from Stockbridge to Suffield.<sup>5</sup> The proprietors of Rindge, N. H., completed a

<sup>2</sup> Downs, *History of Lebanon*, 52, quoting proprietors' records.

<sup>3</sup> Proprietors' Records of Upper Ashuelot, 1734-1786, *Mss.* (hereafter cited as Keene Proprietors' Records, *Mss.*), for May 1, 1735, and June 30, 1737.

<sup>4</sup> Proprietors' Book of Records for the Township of Hartwood, 1763-1788, *Mss.* (hereafter cited as Hartwood Proprietors' Records, *Mss.*), 10, 25, 30. 12 shillings were raised on every share to defray the expenses. *Ibid.*, 10.

<sup>5</sup> Upper Housatonnock Proprietors Records, *Mss.*, 40. For Lower Housatonic, see Proprietors' Records of Lower Housatonnock, 1722-1857, *Mss.* (hereafter cited as Lower Housatonnock Proprietors' Records, *Mss.*), I: 36, 61.

highway to Ashburnham and New Ipswich in 1760.<sup>6</sup> Not only did they build highways, but they also took care of them. This they did by appointing a committee "to keep in repair the highways and roads."<sup>7</sup> When the building of highways took in part of any private property, the proprietors leniently voted lands in exchange therefor.<sup>8</sup> Likewise the streets and road within the township were planned

<sup>6</sup> Stearns, *History of the Town of Rindge, New Hampshire, 1736-1874* (hereafter cited as Stearns, *History of Rindge*), 57-58, 69-70. (hereafter cited as Stearns, *History of Ashburnham*), 66-67; Donovan See also Stearns, *History of Ashburnham, Massachusetts, 1734-1886* (hereafter cited as Stearns, *History of Ashburnham*), 66-67; Donovan and Woodward, *History of the Town of Lyndeborough, New Hampshire, 1735-1905* (hereafter cited as Donovan and Woodward, *History of Lyndeborough*, 32ff.

The proprietors of Housatonic No. 1 built seven highways from the township. Housatonic No. 1 Proprietors' Records, *Mss.*, 79, 80, 81. At Saybrook, Conn., two highways were built by the proprietors "to remain for ye benefit of ye publick." Saybrook Proprietors' Records, *Mss.*, 102; also 137, 142, 171, 179. For the description of highways built by the proprietors, see Proprietors' Records of Egremont, 1757-1863, *Mss.*, (hereafter cited as Egremont Proprietors' Records, *Mss.*), 34-36; New Marlborough Proprietors' Records, *Mss.*, 70-73, 85.

<sup>7</sup> For example, see Norfolk, Conn. Norfolk Proprietor's Records, *Mss.*, B: 11, 20-29-31. The proprietors paid for repair work at the rate of 2s a day. *Ibid.*, 15. Hartwood Proprietors' Records, *Mss.*, 34, 35. The Keene proprietors had a standing committee "to take care and mend them." Keene Proprietors' Records, *Mss.*, for Oct. 2, 1736. Narraganset No. 1 voted money for the repair of highways from time to time. *Records of the Proprietors of Narraganset Township No. 1, now the Town of Buxton, York County, Maine, 1733-1811* (hereafter cited as *Narragansett No. 1 Proprietors' Records*) 160, 163, etc.

<sup>8</sup> Records of the Proprietors of the Two-Mile Section or Potaconk Lands of the Town of Saybrook, now included in the Town of Chester, *Mss.* (hereafter cited as Chester Proprietors' Records, *Mss.*), 28. Housatonic No. 3 granted equivalent for highways more than once. Proprietors' Book of Records, *Mss.*, 119-123, 134-136.



by the proprietors prior to the general division so that home lots and pastures could be parcelled out in due convenience. In these works the proprietors not only paved the way for the settlement of townships but also contributed much toward the general welfare of the respective colonies.

Next to the general plan of the towns, the proprietors, as settlers, personally took part in the actual development of the township of which they were the grantees. This was more true in the seventeenth century when the proprietors were, in the majority of cases, resident proprietors, while in the eighteenth century they became, with the increase of absenteeism, important as the capitalist class. Cooperating with the other inhabitants of the town, the settler-proprietors were responsible for everything that the founding of a town required, from the building of a home to the organization of the town and the provision for the public worship of God. In fact, their activities involved practically everything that is to be discussed in the remaining pages of this chapter.<sup>9</sup>

As capitalists the proprietors provided for the economic beginnings of the town's life. This was a vital necessity second only to the means of communication with the civilized world. Among these the more important were grist mills for the subsistence of settlers and saw mills for the building of their shelters. The mills, indeed, constituted an important economic factor in the town life during the colonial days and the location of the mill is one of the historic places in many New England towns.

The grant of townships by the general court in different colonies always included the benefit of streams and thus arose a curious custom of "water rights" which the proprietors invariably claimed. These water rights the pro-

<sup>9</sup> For the activities of the settler-proprietors of the seventeenth century, see McLear, *op. cit.*, Chapter IV, *passim*; Osgood, *op. cit.*, I: 436ff; Andrews, *River Towns of Connecticut*, 68-71.

prietors freely granted to themselves or to others with the specific purpose of building mills. Great Barrington (Upper Housatonic), Mass., offers the best example in this connection. On Sept. 5, 1749, the proprietors voted

“That all the Streams of water belonging to the Propriety of Upper Housatnock and within said Township proper & convenient for erecting mills with a suitable Quality of land adjoining to said Streams, be sequestered to the use & benefit of the Propriety.”

and in the following December they granted to certain John Williams “the Privilege on the Williams River” for the purpose of erecting a saw mill and a grist mill, provided a mill be erected within one year.<sup>10</sup> The proprietors of Union, Conn., granted the water right to a James Armour “for his benefit in case it be no damage to the public or any private person.”<sup>11</sup> This right of the stream was variously called, as the “water right,” the “benefit of streams,” the “right on the stream,” the “privilege of the stream,” the “Liberty and Privilege of Stream,” etc. In granting such right the proprietors also controlled the location of mills, which they designated as “mill place.”

Together with the water right, the proprietors, in order to encourage the building of mills, always granted a necessary tract of land and often gratuity of money. Moreover, for the proper execution of the promise the proprietors invariably fixed a certain period of time within which the mill must be built; the land and money were forfeited upon breach of promise within the required period. Very often the proprietors’ committee supervised the work of actual construction. A few examples will illustrate the situation. The proprietors of Housatonic No. 3 voted, in

<sup>10</sup> Upper Housatnock Proprietors’ Records, *Mss.*, 33, 36.

<sup>11</sup> Records of the Original Proprietors of the Town of Union, Connecticut, *Mss.* (hereafter cited as Union Proprietors’ Records, *Mss.* 209.

1752, to grant 80 acres of land and £20 of gratuity to John Harwood, in return for which the latter agreed to build a grist mill within one year.<sup>12</sup> The proprietors of Hadham, Conn., entered into an agreement with Joseph Rogers of New London, in which the proprietors agreed to give him a mill land and the right on the stream and the latter agreed to forfeit all in addition to the payment of £100 damage if he failed to complete a mill.<sup>13</sup> At Keene, N. H., the proprietors voted to give 100 acres of land and £25 to any one who will build a saw mill within one year and provide the proprietors with board and slitwood at a certain rate.<sup>14</sup> The proprietors of Narragansett No. 1, of Hartwood, and of New Milford also voted for the building of similar mills.<sup>15</sup> The New Roxbury proprietors offered still more elaborate encouragements for the building of a corn mill: (1) "benefit of streams"; (2) 15-acres home lot, with a proprietary right, together with 15 acres of upland and 30 acres of meadow; (3) 10-acres home lot and 100 acres of upland for the miller's son; (4) 20 acres more

<sup>12</sup> Housatonnoc No. 3 Proprietors' Records, *Mss.*, 56.

<sup>13</sup> Connecticut Archives, Towns and Lands, *Mss.*, II: 89. The mill was not built and a law suit ensued in which the proprietors finally triumphed. *Ibid.*, II: 94, 95b, 97, 98, 99.

<sup>14</sup> Keene Proprietors' Records, *Mss.*, for September 12, 1735. A grist mill was built on a similar basis. Griffin, *History of the Town of Keene, 1732-1874* (hereafter cited as Griffin, *History of Keene*), 26-27.

<sup>15</sup> The Hartwood proprietors offered inducement in 1767, the committee examined the place, and the mill was built in 1678. Hartwood Proprietors' Records, *Mss.*, 34, 35, 49-50, 53. *Narragansett No. 1 Proprietors' Records*, 105, 119-120, 121-122, 123, 125, 131, 141, 149, 155, 269-270, etc. At New Milford, Conn., the first mill was not built and the proprietors kept voting £100 and even £133 as gratuity Orcutt, *History of the Town of New Milford and Bridgewater, Connecticut, 1703-1882* (hereafter cited as Orcutt, *History of New Milford*), 41 and 42.



“provided he bring his wife and settle upon it.”<sup>16</sup> Taking advantage of such bounties offered some adventurous souls occupied the land without building a mill. In such cases law suits often followed.<sup>17</sup> Where the mill was not built or intended to be built later, the proprietors always reserved a certain tract of land for the purpose, specifically designated as such.<sup>18</sup> Sometimes a certain lot was reserved outright for the miller and it descended from one proprietor of the mill to another, by deeds of quitclaim or by Deeds of Warranty . . . free from all conditions.<sup>19</sup> Not only did the proprietors thus provide for the building of mills, but they also appointed committees to procure millers under such gratuities and conditions. One rare case is that of John Winthrop, one of the New London proprietors, who tried to get a miller from among the Scotch-Irish immigrants arriving at Boston. In answer to his letter Thomas Lechmere, his brother-in-law and the Surveyor General of Customs at Boston, wrote that servants were not cheap and

<sup>16</sup> Larned, *History of Windham County, Connecticut*, I: 27, quoting proprietors' records. It was built by William Bartholomew. *Ibid.*, 123.

For other examples of similar type, see: Donovan and Woodward, *History of Lyndeborough*, 31; Smith, *History of the Town of Peterborough, New Hampshire* (hereafter cited as Smith, *History of Peterborough*), 25-26, 344; Blake, *History of Warwick*, 28, 31; Sheldon, *History of Suffield*, 22, 62; Vermont Historical Society, *Proceedings*, 1908-9, 85.

<sup>17</sup> For example, Copeland, *History of the Town of Murrayfield, 1760-1862* (hereafter cited as Copeland, *History of Murrayfield*), 58-59-60; Stearns, *History of Ashburnham*, 83-84-85; Connecticut Archives, Towns and Lands, *Mss.*, II: 94-99.

<sup>18</sup> A mill lot was reserved at Housatonic No. 1. Housatonic No. 1 Proprietors' Records, *Mss.*, 6, 13, 16, 18, 20, 21, 23. Lower Housatonic had a similar lot reserved. Lower Housatonic Proprietors' Records, *Mss.*, I: 82, 88, 345.

<sup>19</sup> *Waterbury Proprietors' Records*, 239-240. In the Report of the committee to investigate the mill land in Waterbury, 1851.

that "never were they dearer than now, there being such demand for them."<sup>20</sup> Besides the millers the proprietors also encouraged other artisans for the settlements, such as carpenters and blacksmiths, upon similar terms as millers.

The proprietors of the eighteenth century as the capitalist class are best shown in their attempts at actual settlements. Next to the general laying out of the towns, the division of land among themselves, and the provision for the economic beginnings of the town life, the most difficult problem which the proprietors had to face was the introduction of actual settlers in order to fulfill the conditions of grants.

A typical example of this phase of the proprietary activities is that of the proprietors of the Narragansett No. 1, or Buxton, Maine, created in 1728. After failing to induce either proprietors or others to settle in the township during the first five years of its active life, the propriety, in 1736, decided to award £20 each for the first ten proprietors who will build a house in his lot and clear four acres of land for cultivation within two successive years. For this purpose it assessed 40s upon each proprietor.<sup>21</sup> Just one year later, finding this not sufficient to induce actual settlement, a new plan was drawn up for the purpose of encouragement. Thirty proprietors were encouraged to file bond for £80 to settle and to receive £20 each for the building of a house and the clearing of land within two years. The settlers were to remain on the land at least seven years. Upon the fulfillment of the conditions, an additional £40 each was voted for each proprietor who was responsible for the settlement, while the failure to fulfill the conditions resulted in the forfeiture of the bond. These

<sup>20</sup> *Winthrop Papers*, VI: 386-387. Ford, *Scotch Irish in America*, 222-223.

<sup>21</sup> *Narragansett No. 1 Proprietors' Records*, 101-102.

thirty proprietors were of course exempted from the taxation to cover the above charges.<sup>22</sup> The same plan was reaffirmed in the following year.<sup>23</sup>

These measures did not bring about actual settlement and in 1742 we read two interesting petitions addressed to the General Court, complaining of the delinquent character of the proprietors. One<sup>24</sup> of these is signed by the eleven settlers of the township, dated May 20, 1742, and bitterly complains of the non-fulfillment of the conditions of the grant. Among other things, it states the "extraordinary cost and charges in carrying on the settlement" to that date, without minister, school, public building, or necessary fortifications; the failure of their repeated attempts in inviting and entreating the proprietors to fulfill the conditions of grant; the distant residence of the proprietors and the inconveniences caused thereby; and their determination to withdraw from the township unless they are better accommodated. Then they prayed the Court to forfeit the whole township to the petitioners. There is no action of the Court on record. The other petition was signed by the sixty-two inhabitants of Biddeford and Scarborough. After complaining that not more than ten or a dozen of the grantees of the township had settled their lots, they petitioned that the land be forfeited and the grant of the same be made to the petitioners.<sup>25</sup> Nothing further developed in the case.

Although these petitions were found to be futile, the

<sup>22</sup> *Ibid.*, 103-104.

<sup>23</sup> *Ibid.*, 105-106.

<sup>24</sup> *Ibid.*, 48-50. The full text of this petition is also in Massachusetts Archives, *Mss.*, CCCIII: 39.

<sup>25</sup> *Narragansett No. 1 Proprietors' Records*, 45-47.

<sup>26</sup> See for example, *Ibid.*, 123, 124, 125, 126, 127, 131, 141, etc. In 1742 £1800 Old Tenor were voted to encourage thirty men who will settle. *Ibid.*, 124.



proprietors, in the meanwhile, were busy in appointing a committee to meet these charges and in planning the actual settlement. During the ten years following, the meetings were held "to encourage the first settlers" and "to bring forward the settlement," to raise money for the encouragement of settlers, and to investigate, even to prosecute, the proprietors who have not fulfilled their bonds.<sup>26</sup> Time and again committees were appointed "to examine and inspect into all demands that may appear against the proprietors" or "to take effectual care that the proprietors do forthwith fulfill their obligations to all intents."<sup>27</sup> However, the result of all these votes were entirely futile and a satisfactory fulfillment of the conditions, particularly with respect to settlement, did not come.

A pecuniary encouragement for the settlement of townships was very commonly given in other grants. The Ashfield proprietors voted £5 to each of the first ten proprietors who should build a house and clear six acres of land;<sup>28</sup> the Ashburnham proprietors granted £4 to each of the fifteen first settlers who should build a house and comply with the other conditions of the grant;<sup>29</sup> the Amherst proprietors agreed to give £6 to each settler who should build a house and clear 2 acres of land within 3 years.<sup>30</sup> At Westminster, £12 each was offered for 15 families in 1734, but none settled; £10 each was offered for 60 families in 1736, but none settled; £29 and 10s each was offered to the settling families in 1741 and at the end of one year

<sup>27</sup> See for example, *Ibid.*, 141, 146, 169, etc.

<sup>28</sup> 1741. Howes, *History of Ashfield*, 59. There were settled about eleven families in 1754 and about nineteen families in 1761. *Ibid.*, 63, 70.

<sup>29</sup> 1739. Stearns, *History of Ashburnham*, 68. The proprietors of Ashburnham were reported to have spent for this purpose £1500 Old Tenor before 1745. *Ibid.*, 74.

<sup>30</sup> 1735. Secomb, *History of Amherst*, 28, 43.

19 families settled, of whom 11 were permanent.<sup>31</sup> The Winchendon proprietors voted £100 to each one of the first ten who should build a house and settle a family, which was complied with.<sup>32</sup> At Warner, in 1740, the propriety decided to offer £20 to the first five families who would settle within one year following; in 1763 40-acres lot was granted to each settler and of the twenty-one who had signed about twelve actually settled.<sup>33</sup> A graduated bounty was offered by the proprietors of Arlington, Vt., to the first ten settlers: £6 to the first, £5-10s to the second, and so on, the tenth receiving £1-10s.<sup>34</sup> At Warwick the proprietors gradually increased the bounty for the purpose of encouragement, as £6 in 1738, £20 in 1749, and £30 in 1751.<sup>35</sup> The proprietors of Hartford, Vt., even offered a premium of 6d for each bushel of wheat, rye, or Indian corn raised at Hartford, as an encouragement for settlement and cultivation of land.<sup>36</sup>

Besides these pecuniary encouragements the settlers usually received gratis a small tract of land for cultivation. Rarely a small charge was collected. Thus at Concord, 20s per capita were collected from one hundred admitted settlers "to pay and defray the charge of the committee"

<sup>31</sup> Heywood, *History of Westminster, Massachusetts*, 64, 65, 74. By 1751, eighty-four settled. *Ibid.*, 82-84.

<sup>32</sup> 1752. Marvin, *History of the Town of Winchendon, Massachusetts, 1735-1868* (hereafter cited as Marvin, *History of Winchendon*), 44. Six settled in March and four in April. *Ibid.*, 44. The first child born in the township received a donation of land from the proprietors. *Ibid.*, 46.

<sup>33</sup> 1763. Harriman, *History of Warner, New Hampshire, 1735-1879* (hereafter cited as Harriman, *History of Warner*), 53, 62, 79, 80.

<sup>34</sup> Goodrich, *Immigration to Vermont*, Vermont Historical Society, *Proceedings* 1908-1909, 85.

<sup>35</sup> Blake, *History of Warwick*, 22, 23. There were thirty-seven families in 1761. *Ibid.*, 31.

<sup>36</sup> 1763. Tucker, *History of Hartford, Vermont, 1761-1889*, 30.

in surveying and granting of land.<sup>37</sup> In some cases land was granted in addition to money for the encouragement of settlers. The proprietors of Murrayfield, thus, gave 100 acres "as an Incouragement" upon filing a bond of £50 as a guarantee for settlement within three years.<sup>38</sup> The proprietors of Keene, N. H., voted, in 1740, 10-acres bounty to the settled proprietors, upon completion of required legal dwelling houses.<sup>39</sup> The Hartwood proprietors in 1765 offered 25-acres bounty in the second division of land to the first ten settlers.<sup>40</sup>

It was through these encouragements offered by the proprietors that some of the numerous townships created in the eighteenth century were settled. It was however a slow process and the proprietors, receiving very little support from the absentee and delinquent proprietors, only partially succeeded in their aims as we shall see later.

#### RELIGIOUS LIFE IN THE TOWNSHIPS

Next to the actual settlement of the townships, one of the important conditions of New England grants was the settling of an orthodox minister and the building of a meeting house for the public worship of God. To provide for the religious life of the inhabitants of the newly founded townships in this way was from the beginning one of the characteristic features of the New England town grants and the religious life always followed the expanding settlements. However, as in the case of the settlement, this condition was not readily complied with until late in the

<sup>37</sup> *New Hampshire State Papers*, XXIV: 613, quoting the records of the proprietors' meeting on February 5, 1725.

<sup>38</sup> The bond was to be returned in three years, however. Murrayfield Proprietors' Records, *Mss.* I:5.

<sup>39</sup> There were forty settled proprietors in 1740, a rare case in this period. Griffin, *History of Keene*, 39-40.

<sup>40</sup> Hartford Proprietors' Records, *Mss.*, 32.



history of the towns. If the settlement itself was not brought about early, it is quite evident that the minister would not be settled early.

As far as the stated minister's and ministerial lots were concerned, the proprietors everywhere faithfully parcelled them out at every division of land in the township. In many cases they even voted an additional grant, not only in land but also in money.

On the other hand, when the proprietors lived far away from the townships and when there were only a few settlers within the townships, the provision of ministers and the building of meeting houses were not an attractive problem. However, we find the proprietors in many towns addressing themselves to this task very early, by appointing committees and voting necessary expenses. At Ashburnham (1735), in spite of the small number of settlers and the enormous expense to the proprietors, the meeting house was built in 1740, £3,000 being levied upon the proprietors for the purpose.<sup>41</sup> The proprietors of Amherst (1734) raised the frame work of a meeting house in 1739, and kept voting funds to finish it until 1753 when it was practically completed.<sup>42</sup> At Westminster (1728) the meeting house was built in 1739,<sup>43</sup> at Buxton (1728) in 1741,<sup>44</sup> at Peterborough (1738) in 1752,<sup>45</sup> at Winchendon (1735) raised in 1752 and finished in 1762,<sup>46</sup> and at Warwick

<sup>41</sup> Stearns, *History of Ashburnham*, 66, 67. The amount was Old Tenor. The date attached to the name of the town is the date of the grant, so as to show the lapse of time when the conditions were fulfilled.

<sup>42</sup> The first meeting of the proprietors was held in the new meeting house at Amherst in 1745. Secomb, *History of Amherst*, 234-236.

<sup>43</sup> Heywood, *History of Westminster*, 69, 71.

<sup>44</sup> *Narragansett No. 1 Proprietors' Records*, 120, 121, 127.

<sup>45</sup> Smith, *History of Peterborough*, 84.

<sup>46</sup> Marvin, *History of Winchendon*, 50, 51, 146ff.

(1735) in 1736.<sup>47</sup> The proprietors of Hartwood (1763) voted for the building of the meeting house, appointed a committee, and appropriated £72 (Extra £36 for cords and shingles and later additional £18) in 1767 and 1768 but the building was not finished before 1772.<sup>48</sup> The proprietors of Housatonic No. 1 (1737) voted for a meeting house in 1742 and appropriated £134;<sup>49</sup> at Upper Housatonic, after the building of the meeting house, the pews were sold to the highest bidders to defray the expenses;<sup>50</sup> the proprietors of Bennington, Vt., voted "to raise six dollars on every right" and even to petition the New Hampshire government "to raise a tax on all lands in Bennington, resident and non-resident, to build a meeting house."<sup>51</sup> In many cases the problem of building the meeting house is discussed at the very first meeting of the proprietors, though the construction is not finished till later; in others the discussion was postponed ten or even twenty years. The usual procedure was the appointment of a committee which was empowered to select the site, to clear the ground, to let the contract, and to report the necessary expenses. Many charges accrued on this account alone, besides the actual expense of raising the meeting house itself.

The delay in the work was more than common in those

<sup>47</sup> Blake, *History of Warwick*, 25-26.

<sup>48</sup> Hartwood Proprietors' Records, *Mss.*, 36, 37-38, 43, 75, 79. In 1769 the first project was twice negatived at the proprietors' meeting.

<sup>49</sup> Housatonnoc No. 1 Proprietors' Records, *Mss.*, 29, 64. The expense was paid by the proprietors' treasurer. *Ibid.*, 31.

<sup>50</sup> The proprietors' meeting on April 4, 1746. After reserving a pew for the minister, the remaining pews were voted to be sold. The prices were: £77, £73, £40, £97, etc., all Old Tenor. Upper Housatonnock Proprietors' Records, *Mss.*, 161. The meeting house was voted in 1742 and built in 1743. *Ibid.*, 156-157, 158.

<sup>51</sup> Jennings, *Memorial of a Century: Bennington, Vermont*, 25, quoting the proprietors' records.

days when the means of communication were imperfect and the proprietors lived far away from the townships. It was due to similar factors which retarded the settlement projects in general.<sup>52</sup> In this case Indian hostility was an important impediment. At Lyndeborough (1735), where the meeting house was raised in 1741, for example, the further work was stopped on account of three reasons: the New Hampshire-Massachusetts boundary dispute and its uncertainty, the troublesome Masonian claims, and the prospect of an approaching Indian war.<sup>53</sup> At Buxton the finishing of the meeting house was delayed "by reason of ye talk of a french war."<sup>54</sup>

The settlement of ministers was a still more difficult task and was delayed even longer than the building of the meeting houses. But the proprietors were not altogether negligent in fulfilling the conditions of grants. Before the settlement of a permanent minister, the proprietors, as soon as there were enough inhabitants, provided for preaching in the summer time, during a certain period of the year, or a certain selected Sundays. Thus, for example, the proprietors of Buxton, Me., before the final settlement of a minister in 1762, are seen appointing committees from time to time and voting liberally the necessary expenses for the preaching in the new township.<sup>55</sup> The proprietors of Westminster<sup>56</sup> and of Amherst<sup>57</sup> also voted for similar purposes.

Then followed the actual settlement of ministers. At

<sup>52</sup> See below, 221-223.

<sup>53</sup> Donovan and Woodward, *History of Lyndeborough*, 35, 36, 37.

<sup>54</sup> *Narragansett No. 1 Proprietors' Records*, 127.

<sup>55</sup> *Ibid.*, 160, 162, 172, 174, 182, etc. Over £100 were paid in 1752, £96 in 1756, £66 and 13s in 1757, £150 in 1761, etc.

<sup>56</sup> They voted £60 annually from 1738 till 1741. Heywood, *History of Westminster*, 106, 197, 198.

<sup>57</sup> £20 for preaching for six months in 1738 and 1739, and an additional sum of 50s a day for each Sabbath preaching in 1739 and 1740. Secomb, *History of Amherst*, 251.



Keene, N. H., the proprietors ordained and settled a minister in 1738, with a promise that the propriety will pay him £150 for the first year, £130 per annum for ten years following, and then £10 more as long as he lives. Moreover, £280 was voted for the expense of ordination and salary, and £24 for his fire woods.<sup>58</sup> The proprietors of New Marblehead made an agreement in 1760 with the inhabitants in which the former agreed to pay £120 for the first year and £60 per annum for the two ensuing years for the settlement of a minister.<sup>59</sup> At Amherst (1734) the proprietors ordained and installed a minister in 1741, and voted £240 to pay the minister's "Settlement, Salary, Ordination; and other Charges."<sup>60</sup> At Westminster (1728) a minister was ordained in 1742,<sup>61</sup> at Ashburnham (1735) in 1760,<sup>62</sup> at Warwick (1735) in 1760,<sup>63</sup> and at Winchendon (1735) in 1762.<sup>64</sup> The salary of the ministers thus ordained and installed ranged from fifty to one hundred and fifty pounds a year, and the proprietors paid it together with other ministerial expenses until the town was incorporated. These expenses were raised in proportion to the shares held by the proprietors.<sup>65</sup> Besides the salary the proprie-

<sup>58</sup> Griffin, *History of Keene*, 46, 47, 49-50. Earlier in 1737, they voted £60 and appointed a committee to settle one. *Ibid.*, 39.

<sup>59</sup> Dated June 6, 1760. Massachusetts Archives, *Mss.*, CXVII: 425.

<sup>60</sup> Secomb, *History of Amherst*, 252.

<sup>61</sup> Heywood, *History of Westminster*, 110.

<sup>62</sup> Stearns, *History of Ashburnham*, 245-247, 251.

<sup>63</sup> Blake, *History of Warwick*, 28-29.

<sup>64</sup> Marvin, *History of Winchendon*, 147-148.

<sup>65</sup> For example, the proprietors of Housatonic No. 1 assessed 10s a right to raise £134 toward the settlement of a minister. Housatonic No. 1 Proprietors' Records, *Mss.*, 25, 28-29, 75. The Hartwood proprietors voted "half a Doaler a right" and "a Doaler a Right" for the same purpose. Hartwood Proprietors' Records, *Mss.*, 48, 71.

tors sometimes granted additional pieces of land or proprietary rights to reward the minister's work.<sup>66</sup>

Thus we may note that the proprietors contributed much toward the healthy settlement of townships by providing, sooner or later, for the public worship of God in the far off woodlands of New England. The house of God always followed the settlements.

#### PROPRIETORS AND THE FRONTIER DEFENSE

The occupation of the frontier districts was closely interwoven with the defense of the frontiers, and as the line of the first official New England frontier widened its curve outward with the advance of settlements, the problem of defense became graver. The Massachusetts townships in the north and the west, in fact, were created partly for the defense of the Province against Indians, while this very fact constituted one of the strongest impediments on the road to settlements. The proprietors of the frontier townships were not altogether blind to the problem and to their responsibility. In their zeal to bring about settlements, even if they were in the minority, some of them tried to increase the prestige of their respective townships by providing some means of defense.

The proprietors of Peterborough were from necessity interested in the problem of defense. In October, 1750, they addressed a petition to the General Court at Boston for liberty to build a blockhouse in the township at government expense and took measures to protect the settlers

<sup>66</sup> The Union proprietors gave 200 acres to Wyman, a settled minister. Lawson, *History of Union, Connecticut*, 60. The proprietors of Upper Housatonic voted 50 acres to Rev. Samuel Hopkins in 1774. Upper Housatonnock Proprietors' Records, *Mss.*, 8. At Saybrook, Conn., a £50 right was voted for the minister. Saybrook Proprietors' Records, *Mss.*, 54. See also Smith, *History of Peterborough*, 354-355; Marvin, *History of Winchendon*, 148ff.

from Indian raids.<sup>67</sup> Getting no encouragement from the Court, at their regular meeting held in Boston in December, they voted and sent ten pounds of powder and twenty pounds of lead “for the use of the settlers.”<sup>68</sup> Four years later they again sent half a barrel of powder, one hundred pounds of lead, and two hundred flints for the use of the settlers “in case of war.” At the same time the minister at Peterborough was presented with a gun.<sup>69</sup> The proprietors of Charleston, N. H., set themselves in 1743 to build a fort for the benefit of the settlers and expended upward of £300, but the whole settlement was unfortunately deserted when the Indian war came shortly afterward.<sup>70</sup> The Winchendon proprietors in 1753 raised £300 O.T. for fortifying the homes and completing the garrison.<sup>71</sup> At Ashburnham, the proprietors also built a blockhouse for the benefit of the settlers there.<sup>72</sup> The proprietors of Narragansett No. 1 assisted the Province garrison and voted to aid the building of forts.<sup>73</sup>

These are a few of the scattered proprietary activities with regard to the problem of defense. Generally speaking, however, they left the problem of defense to the care of the colonial governments and the pioneer settlers themselves.<sup>74</sup>

<sup>67</sup> Massachusetts Archives, *Mss.*, CXVII: 184–185.

<sup>68</sup> The proprietors' meeting on Dec. 14, 1750. Smith, *History of Peterborough*, 348.

<sup>69</sup> The proprietors' meeting on June 4, 1754. *Ibid.*, 350.

<sup>70</sup> The proprietors' meeting on Nov. 24, 1743. A committee of three members was appointed to carry on the work and voted “a Carpenter be allowed 9<sup>s</sup> O. T. per day; each laborer 7<sup>s</sup> per day, and a pair of oxen 3<sup>s</sup> 6<sup>d</sup> per day Old Tenor.” Saunderson, *History of Charlestown, New Hampshire, the Old No. 4*, 17–18.

<sup>71</sup> The proprietors' meeting on Oct. 31, 1754. Marvin, *History of Winchendon*, 47.

<sup>72</sup> 1744. Stearns, *History of Ashburnham*, 72–73.

<sup>73</sup> *Narragansett No. 1 Proprietors' Records*, 137, 167–168.

<sup>74</sup> For the similar activities of the Great Proprietors, see below Chapter VIII, “The Revival of the Ancient Patents.”



## II. THE DIVISION OF LANDS

As proprietors of the common and undivided lands, the chief activities of the town proprietors centered upon the division and distribution of land. As land was the source of their being as well as the center of their interest, this phase of their activities naturally formed a most important part of the life of any propriety. In order to understand the proper significance of the division of the common and undivided lands, we must briefly describe the general layout of towns under the New England regime.

The character of the land in any township differed according to its location and topography. Naturally, although the plan of settlement in its general outline was uniform, in the result there was infinite variety of detail. In general, however, if we discard the minor features, the land might be classified roughly under the three heads: (1) the cleared upland which furnished the town plot, home lots, and planting grounds; (2) the meadow or marshy lands which lay around the cleared land and were generally utilized for hay and pasturage; and (3) the woodlands which furnished wood and sometimes were used for swine, sheep, or young cattle.<sup>75</sup>

The first step in the settlement of a town was the laying out of the town plot and the assignment of home lots, with necessary streets and highways.<sup>76</sup> In thus laying the foundation of the future town, the proprietors (the town in the earlier years) usually reserved a small tract of land in the center of the township for the use of the town generally and around it had grown all town activities. This is the "town common" which forms an unique spot in almost all New England towns even to-day. Other public lots such as the burying ground and the school lots and the church lots adjoined it, while the minister's lots were allotted from

<sup>75</sup> Osgood, *op. cit.*, I: 437-438; Mead, *op. cit.*, 74-75.

time to time with the other divisions. At times other lands were sequestered as "town common" and furnished pasturage, firewood, timber, building materials, etc., to the inhabitants of the town without any reference to the proprietary ownership.

The assignment of first home lots was accompanied or immediately followed by the division of the adjacent lands, the meadow and the arable and the woodland. These were divided from time to time into large fields in tiers or in rectangular plots, according to their location and value, and subdivided in severalty among the proprietors or sometimes given to the admitted non-proprietors for their encouragement.<sup>77</sup> These divisions ordinarily took two forms: grant of lots to individuals and laying out of common fields. The common fields too, in their turn, were later subdivided among the proprietors. In the majority of the New England proprietries, these several divisions came one after another, covering a considerable period of time, until the whole township was transferred into individual ownership. A significant result of dividing up a township in this manner was that a considerable portion of the land would remain for a greater or less period of time undivided. This portion was under the exclusive management of the town proprietors and was known as the "common and undivided lands."

The principle by which these common and undivided lands were divided and distributed among the proprietors or the new comers differed slightly before and after the

<sup>76</sup> For the method of laying out the home lots and their varying sizes, see Egleston, *op. cit.*, 42-43; Mead, *op. cit.*, 75; McLear, *op. cit.*, 81-84; Osgood, *op. cit.*, I: 438-439.

<sup>77</sup> For the description of divisions into tiers, see Andrews, *River Towns of Connecticut*, 45ff. For the division of towns in its diverse forms, see Osgood, *op. cit.*, I: 438-449; McLear, *op. cit.*, 85ff.

legal organization of the proprietors.<sup>78</sup> During the early years, generally in the seventeenth century, when the town and the proprietors were practically coterminous and when the town controlled all divisions of land, there seems to have been no uniformity nor universal rule. The distribution of land was generally based upon the number of shares held,<sup>79</sup> amount of town charges or taxes paid,<sup>80</sup> value of estates or property possessed,<sup>81</sup> or number of persons con-

<sup>78</sup> For the general treatment of this subject, see the following: McLearn, *op. cit.*, 81-87; Osgood, *op. cit.*, I: 456-464; Andrews, *River Towns of Connecticut*, 42-63; Egleston, *op. cit.*, 34-39; Mead, *op. cit.*, 74-76.

<sup>79</sup> Temple and Sheldon, *History of the Town of Northfield*, 220; Roads, *History of Marblehead*, 18; Sheldon, *History of Deerfield*, I: 9. The shares in the earlier years were based upon the number of original settlers and legally admitted members. Sometimes they were determined in accordance with the amount of money contributed in the purchase of land or for the betterment of the township. At times shares were counted according to the number of rights a person possessed in a certain division of a tract of land. In Cambridge, Mass., for example, the shares were proportioned to the interest held in the Cow Common. *Cambridge Proprietors' Records*, 144-145, 160-165. Similar thing was true at Hampden, N. H. Dow, *History of Hampden, New Hampshire, 1630-1892*, I: 32-33.

<sup>80</sup> At Ipswich, Mass., the division of 1665 was made according to the town rates in the proportion of 4, 6, and 8, thus giving the poorest one-half as much as the richest. Egleston, *op. cit.*, 37. In Guilford, Conn., it was agreed that "every one should pay his proportional part or share toward all the charges and expenses for purchasing, settling, surveying and carrying on the necessary public affairs of the plantation, and that all divisions of land should be made in exact proportion to the sums they advanced and expended." *Ibid.*, 38. See also Hadley Proprietors' Records, *Mss.*, 246-251; Nash, *History of Weymouth*, 50; Mann, *Historical Annals of Dedham*, 82; Egleston, *op. cit.*, 34-35; Osgood, *op. cit.*, I: 456.

<sup>81</sup> This method was quite popular in many towns during the earlier years. Lewis and Newhall, *History of Lynn*, 308; Wells and



tained in a family.<sup>82</sup> Of these the first principle was more universal while the last one was limited to a few towns and gradually died away. The right to a division of land on the basis of dwelling houses was another principle which was practiced in some towns but it proved to be merely a source of trouble.<sup>83</sup> When we come to the eighteenth century, after the proprietors became independent of the towns and organized themselves legally as a propriety, the principle followed in any division of common and undivided lands was almost universally uniform, namely, division ac-

Wells, *History of Hatfield, Massachusetts, 1660-1910* (hereafter cited as Welles and Welles, *History of Hatfield*), 109-110, 473-476; Bleis, *History of Rehoboth*, 25; Eggleston, *op. cit.*, 35-36. At Haverhill, Mass., it was voted in 1643 that "he that was worth £222, to have 20 acres to his house-lot . . . and so every one under that sum to have acres proportionable for his house-lot, together with meadow and common, and planting ground proportionably." Chase, *History of Haverhill*, 56, quoting Haverhill records. In Hadley, Mass., where the rates were used as a basis of division, the estates were also used. At one time, each proprietor received allotments according to his estates, varying from £50 to £200. Eggleston, *op. cit.*, 36-37. See also *New Haven Col. Rec.*, I: 27, 43, 192.

<sup>82</sup> Drake, *History of Middlesex County*, II: 461. In Northampton, Mass., every head of the family was to have six acres and every single man four acres, in addition to their respective shares. Eggleston, *op. cit.*, 36. In the New Haven Colony, the division was based both upon the value of estates and the number of persons. In the first division, the rate was 5 acres to £100 and 2½ acres for each person. *New Haven Col. Rec.*, I: 27, 43. At Hadley, Mass., sometimes the head of the family drew lot and the minor above 16 years old was given £25 right. Holland, *History of Western Massachusetts*, I: 33.

<sup>83</sup> The "cottagers" specifically belonged to this class. See below Chapter V, on "The Controversies of the Town Proprietors." At one time in Cambridge, Mass., householders who had no right were given 12 acres each. *Cambridge Proprietors' Records*, 167. Andrews, *River Towns of Connecticut*, 56-57, gives the case of Wethersfield in 1670.

according to the interest a proprietor held in any propriety.<sup>84</sup> Such interest was commonly known as “shares,” “rights,” “accommodations,” or simply “interests.” These shares were equal in value, being same in number as the original proprietors and were often divided into small fractional parts as they passed from one person to another, both by purchase and inheritance.

In the actual division, the principle of fairness was given a prominent place, each share being entitled to an equal amount of land. This was brought about by a system of drawing lots in the distribution of divided lands, thus assuring the fairness of division in the first instance.<sup>85</sup> This however often failed in accomplishing the desired equality of division as to the quality of land and the system of equalizing the divided lots as to “quality and quantity”

<sup>84</sup> Sometimes the older method was followed. See the case of Windsor, Conn., where the real estate was the basis of division in 1725. Andrews, *River Towns of Connecticut*, 59, foot note.

<sup>85</sup> The practice of drawing lots at Enfield, Conn., is thus described, as it was used in the division of 1725, in the Commoners' Book: “a Number of papers with a figure on Each paper from y<sup>e</sup> Number of one until there be so many papers Numbered that they may Extend to y<sup>e</sup> whole Number of Proprietrs and according to the Number upon the paper that Each Proprietor or Commoner shall then Receive; So thay Shall goe in order to y<sup>e</sup> place where the papers are prepared for the Lott and Draw papers in order for the taking up of his Lotts upon the Commons as it has been heretofore granted.” Allen, *History of Enfield*, I (*Commoners' Book*): 714–715. The Norfolk (Conn.) proprietors followed a different method: “The method we now agree to draw our lots is—the 52 lots be put into a hatt, and some indifferent person shall draw out a ticket which shall be numbered which shall be the lot's number, and the lot which either proprietors draw as above shall be held as his in severalty, and the next 52 lots shall be drawn for in the same method.” Norfolk Proprietors' Records, *Mss.*, B: 7, 8. At Keene, N. H., one lot was drawn one day, another next day, and so forth until the whole is divided and allocated. Keene Proprietors' Records, *Mss.*, for Oct. 26, 1737.

was everywhere carefully practiced.<sup>86</sup> This was done either (1) by the surveyor in charge of the division in dividing up land according to its quality in advance, (2) by "choice pitch" or scattering of one's lots so as to compensate a bad land by a better, or (3) by granting, after the division, "equalizing lots" or "equivalent" in accordance with the complaint. The result of such a system was the scattering of one's holdings at different sections all over the township which was quite characteristic of the proprietary holdings in the New England towns. In order to keep up further harmony among the proprietors, even three or more proprietors were given power to petition for a division in some town and thereby interests of the few and the majority were reconciled.<sup>87</sup> The result was that the poor was generally well provided for and in some towns the largest share was only four times greater than the smallest; while in some towns the ratio was even two to one.<sup>88</sup> At Springfield, Mass., land was granted only to the proprietors of small holdings and the proprietors went so far as to forbid the sale of granted land to "any person that hath land now granted" in order that "no person may engross more

<sup>86</sup> At New Milford, Conn., in a division, it was agreed that "what is wanting in quality of the land" should "be made up in quantity." Orcutt, *History of New Milford*, 13-14. The Keene proprietors voted in 1736 that the surveyor should "proportion Each Lott in quallety by considering the qualleties of Each man's former Divisions to make Each mans Right in all former Divisions alike in quallety." Keene Proprietors' Records, *Mss.*, for May 14, 1736. See also, Upper Housatonnock Proprietors' Records, *Mss.*, I: 7; *Mass. Acts and Resolves*, XI: 659, 797.

<sup>87</sup> *Mass. Acts and Resolves*, IV: 524-525, 679-680.

<sup>88</sup> See for example, Felt, *History of Ipswich*, 161; Osgood, *op. cit.*, I: 458-461.



than one share of land there.”<sup>89</sup> However, great inequality was the natural result and engrossment was not uncommon, particularly in the eighteenth century when the spirit of speculation crept into land transactions.<sup>90</sup>

The voting on the question of commonage and the division of undivided lands had a development also to be noted in this connection. At first, when the town and the proprietors exercised joint authority over the land in the earlier period, there seems to have been uniform voting based upon number. In the Plymouth Colony, a majority vote according to the number of proprietors was decreed in 1682.<sup>91</sup> In Massachusetts it was sometimes the individual, not the amount of his interests, which determined the vote. But as time went on, the property interest became stronger and the matter came to be settled in the proprietors’ meeting where each man was entitled to an influence proportionate to the amount of his interest in the land, that is, in proportion to his shares. The same principle, as a result of a similar evolution, was in practice also in the other New England Colonies and the proprietary shares became invariably the basis of all proprietary votes during the eighteenth century.

As the proprietors divided or sold or set off their lands in severalty, they remained proprietors in common only of the residue. With the multiplication of divisions all lands were eventually transferred from common into individual ownership. At such a stage, when all common lands were resolved into holdings in severalty and the object for which

<sup>89</sup> Burt, *History of Springfield*, I: 318–319, quoting records.

<sup>90</sup> Controversies were often due to the inequality of proprietary divisions. See below Chapter V, “The Controversies of the Town Proprietors.”

<sup>91</sup> *Plym. Col. Rec., Laws*, 257.

they existed disappeared, the organization of proprietors became no longer necessary and ceased to exist for lack of *raison d'être*.<sup>92</sup>

### III. THE COMMON FIELD SYSTEM

Besides the "town common" and the proprietors' "common and undivided lands," there was still another form of common land. It was customary in many New England towns to allow the lands already divided up among the proprietors to remain in a "common field." Sometimes a certain tract of land, to be used or improved in common, was set aside as proprietors' "common field" without division in severalty. The New England settlers were well accustomed with the tenure of these common fields in England where the system was in practice from an early date. The value of these stated commons before the division in severalty lay in their furnishing pasturage for horses, cattle, and sheep and providing the proprietors with timber, stone, grass, and earth. In the earlier years the common cultivation of these common fields, in large or small scale, was very general in the New England towns, but the communal method of cultivation did not gain a strong foothold there in the midst of growing individualism and the system persisted only in a very small number of towns, if at all, in the later period.<sup>93</sup> On the other hand, the system of commonage lasted till late in many towns in the form of common pasturage and the "right of commonage" became

<sup>92</sup> Andrews, *River Towns of Connecticut*, 62; *New Hampshire State Papers*, XXIV: v; Fry, *New Hampshire as a Royal Province*, 297; Angell and Ames, *Law of Private Corporation Aggregate*, 183; Mead, *op. cit.*, 73 and foot notes.

<sup>93</sup> For the custom of common cultivation, see Eggleston, *op. cit.*, 41-42; Osgood, *op. cit.*, I: 117-118, 440-441; McLear, *op. cit.*, 87-94.

one of the highly valued proprietary rights in many a propriety.<sup>94</sup>

The common fields were under the exclusive control of the proprietors.<sup>95</sup> Where it was already divided among individual proprietors, each owner improved his own plot in his own way and after the crops had been removed it was customary to open the field in common for all proprietors, allowing each owner to turn in a number of cattle in proportion to his acreage of land in the field.<sup>96</sup> When the common fields were set aside by the proprietors *en bloc* without division in severalty, the right of commonage was regulated according to the proprietors' shares. In either case, the importance, as well as the difficulty, of this phase of the proprietary activities is well brought out by the amount of colonial legislation upon the subject. These innumerable regulations directed the proprietors:<sup>97</sup> to enclose all common fields; to build and to keep in repair the common fences and gates, the amount being proportional to the amount of holdings in the field or the number of proprie-

<sup>94</sup> That the colonists were accustomed to this form of tenure in England and that the principle of commonage is as old as the settled occupations of land itself are clearly brought out by Andrews, *River Towns of Connecticut*, 65ff.

<sup>95</sup> In the early years, this was left to the town. The Act of 1643 in Massachusetts, for example, gave the town officers the decision of disputes among proprietors as to the use of the common fields. See Osgood, *op. cit.*, I: 433-434; McLear, *op. cit.*, 88-90. This again is the question of transition, as in the case of proprietors' organizations.

<sup>96</sup> Osgood, *op. cit.*, I: 433-434; Mead, *op. cit.*, 77; McLear, *op. cit.*, 92.

<sup>97</sup> *Mass. Col. Rec.*, I: 106; II: 15, 39, 49, 195; *Mass. Acts and Resolves*, II: 100-101, 218, 466, etc. *Conn. Col. Rec.*, IV: 266, 346, 410, 544; V: 234, 403; VII: 309, 379, 408, 467; VIII: 166-168; IX: 239. See particularly the Connecticut Law of 1732, "An Act for the better managing and securing and more equal fencing of common field." *Ibid.*, VII: 379-380.



tary shares in the propriety; to appoint fence-viewers and haywards whose duty it was to view the fences under oath at regular intervals and impose fines on those proprietors who failed to keep their portions in repair; to hold an annual meeting, usually in March, for the better regulation of the fields; to submit disputes, when difficulty arose as to the division of fences, to the selectmen of the town whose decision by the major vote would be binding; and to pay all the damages done by the beasts where fences were not properly built and maintained. The minute regulations as to the size and the proportion of fences to be borne by the individuals, the fines for the neglect of building fences and keeping them in repair, and the allied subjects were left to the proprietors' meeting to decide upon.<sup>98</sup> In the actual carrying out of these orders, the town played an important part in the earlier years when the proprietary interests were diffused with those of the town. As the proprietors began to assert their power over the common and undivided lands they took up the responsibility upon themselves, and upon their legal organization from the close of the seventeenth century, this transition was practically complete everywhere. Such a system of fencing was one of the most difficult tasks to enforce and naturally the greater part of the proprietary activities centered upon it.<sup>99</sup> The system of common field, moreover, was the cause of constant trespasses and encroachments on the part of the non-proprie-

<sup>98</sup> The towns dealt with this problem in the early years as in the other cases already noted.

<sup>99</sup> An extreme example is the case of the proprietors of Madison, Conn., where the proprietors' records show that the "line of common fence" was practically the only subject of discussion and voting in the proprietors' meetings between 1725 and 1730. Records of Proprietors of "Hammonasset Quarter," Guilford, now Madison, 1715-1841, *Mss.* (hereafter cited as Madison Proprietors' Records, *Mss.*), for those years.

tors, and controversies were constant on account of these "silent invaders."<sup>100</sup>

The right of commonage was proportionate to the shares held in the propriety and was transferable.<sup>101</sup> During half the years the common fields were cultivated according to the proprietors' respective shares, numbered out in acres. In the fall, after the crops had been removed and grass had been cut, the whole field was open for the common pasturage and the cattle, horses, and sheep were turned in for pasture till the spring. The number of beasts was again proportioned according to the shares, the number per share being previously determined.<sup>102</sup> In theory this right of commonage was exclusively limited to the proprietors; but in practice non-proprietors were often accorded that right. The opening day of the "commoning time," as it was called, was looked forward with great interest and formed one of the rare *pastimes* in the early town life. The date was set in the proprietors' meeting, all beasts were properly registered with the committee in charge, and the

<sup>100</sup> For such controversies, see below Chapter V, "The Controversies of the Town Proprietors."

<sup>101</sup> In Deerfield, Mass., for example, rights of commonage were sold, hired, or leased at fluctuating prices. Sheldon, *Common Field of Deerfield* (Pocumtuck Valley Memorial Association, *Proceedings*, V), 249.

<sup>102</sup> The practice at Deerfield is a good example: one cow or ox was counted as one right; 3 three years olds as two rights; 2 two years olds as one right; 3 calves or 5 sheep as one right. Horses were counted three to five rights a piece and sometimes ruled out altogether. A bull over six months old was equal to one hundred rights. Sheldon, *Common Field of Deerfield* (Pocumtuck Valley Memorial Association, *Proceedings*, V), 249. At Nantucket, it differed at different times: 1672, one share to 23 sheep; 1689, one share to 2 horses, 40 cows, or 100 sheep; 1706, one share to 1 horse, 2 cows, or 16 sheep. Worth, *op. cit.*, 200. Brand for horses was also regulated by the colonies. See for example, Connecticut Archives, Industry, *Mss.*, I, *passim*; *Conn. Col. Rec.*, VII: 111.

committee of vigilance was required to see that the proper proportion was not *exceeded*. The maintenance of common herdsmen was a characteristic accompaniment of such a system and common herdsmen and shepherds were very familiar figures in the local annals of all parts of New England.<sup>103</sup>

<sup>103</sup> For the complete study on the subject, see Sheldon, *Common Field of Deerfield* (Pocumtuck Valley Memorial Association, *Proceedings*, V), 238–254. Also, Bronson, *History of Waterbury*, 60–61.



## CHAPTER V

### THE CONTROVERSIES OF THE TOWN PROPRIETORS

#### I. ROYAL CONTROL AND THE REGIME OF ANDROS

It has been pointed out in an early chapter that the town proprietors in the New England colonies existed, throughout the colonial period, as an inter-colonial institution and that they were not under the imperial control or within the scope of the imperial system. This inter-colonial independence of the New England town proprietors, however, was once seriously endangered from the external source. That single experiment was the regime of Andros. Inasmuch as it directly menaced the town proprietors in their property right and the free tenure of land, we may briefly note the course of events so far as they affected the town proprietors and their rights.

From the point of view of the imperial system, which was slowly growing up toward the latter part of the seventeenth century, there were several elements in the New England land system which constituted the source of complaints. The most important of these was the absence of the quit-rents in the several colonies of New England.

The institution of quit-rents never obtained a strong foot hold in the New England colonies. Though quit-rents were originally proposed as a feature of the land system, they were not actually established in the colonies of Massachusetts Bay, Plymouth, Connecticut, and Rhode Is-

land.<sup>1</sup> The responsibility for the failure to establish the quit rent in these leading colonies of New England, as Bond has pointed out,<sup>2</sup> can be traced in the first instance to the wavering and inconsistent policy of the New England Council. While it did not abandon the policy of reserving such a charge, there is no evidence of any attempt to collect these rents. More important in excluding the system from New England was the fact that the principle of the quit rent was fundamentally foreign to the Puritan idea of the absolute ownership of the soil, free of all feudal incidents and external restraints. The free tenure of land persisted from the first in Plymouth and Massachusetts; the same idea completely controlled the Connecticut people from the beginning and it was assured by the code of 1650; Rhode Island also reflected the Massachusetts system in banishing the feudal rent from its soil; and when Massachusetts annexed Maine in 1679, the quit-rents were completely banished from all New England except New Hampshire. We must remember, also, the relaxation of the control exercised by the British Government during the Puritan Revolution and the Period of the Commonwealth and Protectorate, which greatly strengthened the system of free tenure of land in New England.

Under these circumstances, "if the proprietary rights of the crown were to be asserted in the New England colonies, the system of land tenure free from the usual feudal charge, the quit-rent, must first be attacked in its chief stronghold, Massachusetts."<sup>3</sup> Accordingly, the first suggestion of quit-rents in Massachusetts seems to have been made by

<sup>1</sup> For the full discussion of this subject see Bond, *Quit-Rent System in the American Colonies*, Chapter II. Prof. Andrews' assiduous research enabled him to find a few instances of actual requirement of such a charge in Massachusetts, but these did not last any length of time. *Ibid.*, note on 22-23.

*Ibid.*, 35-36.

*Ibid.*, 42.

Edward Randolph in 1677, when he characterized the inhabitants of the colony as usurpers who possessed no legal right either to the land or to the government of any part of New England. His best remedy was a general pardon with a royal declaration, "confirming to the inhabitants the land and houses they now possess upon payment of any easy quit-rent."<sup>4</sup> Again in 1686 he pointed out the revenue value of such imposition in Massachusetts, as well as in Rhode Island and Connecticut, but he was aware of the difficulty of collecting such rents.<sup>5</sup> Possibly it was from such influence as this that the Lords of Trade recommended, in 1684, the confirmation of "all titles of land quietly possessed" in Massachusetts, "reserving a quit-rent of 2s 6d every hundred acres."<sup>6</sup> This is the immediate forerunner of Andros' instruction.

But the absence of quit-rent was not the only grievance from the standpoint of imperial control; there were also certain defects in the land system in general, which were attacked by Andros and his subordinates.

That the King was the source of all titles to land was in general way understood. But in legal documents by which lands and townships were granted at the time, the line of connection had rarely, if ever, been traced back beyond the colony charters. Grants had generally been made by a mere vote of the general court, even without the use of the colony seal, though the charter specifically required it should be used in all such transactions. The Puritan abhorrence of any external control ignored such formalities. In fact, the grantees held their title directly

<sup>4</sup> Memoir of Edward Randolph for May 6, 1677. Toppan, *Edward Randolph: His Letters and Correspondences* (hereafter cited as *Randolph Correspondences*), I: 77-78; Bond, *op. cit.*, 43.

<sup>5</sup> Bond, *op. cit.*, 43.

<sup>6</sup> In the recommended instruction to Colonel Kirke, the intended governor of Massachusetts, Dec. 23, 1684. Bond, *op. cit.*, 44, Note 1.



from the general court or by purchases from the Indians upon permission of the court and there was no indication or acknowledgement of any other overlord.<sup>7</sup>

Moreover, in the formulation of town grants and in the system of proprietors' allotments by which land generally passed into private ownership, there was much in the New England practice which, from the standpoint of the English law, was irregular or at least novel and undefined. Neither towns nor proprietors were expressly incorporated at the time in the way towns in the home country were established. It was beyond the power of the governments in the corporate colonies to grant them this quality.<sup>8</sup>

Then also, under the system of common and undivided lands, much land remained unoccupied and unimproved for an indefinite period of time. Yet those lands were not subject to grant or division, as we have seen, except by the proprietors themselves, or, in the early years, by the towns.

In short, we have here at least four things which go to make up the grounds for the royal control as it was asserted under James II., namely, (1) the absence of quit-rents, (2) the failure to recognize the royal title to the soil, (3) the irregular practice followed in the distribution of land and the non-incorporated character of towns and proprietors, and (4) the system of idle land. Of these while the first was the most important, yet all touched the proprietors of the soil. In this brief survey, however, we shall limit ourselves only to that phase which affected the land tenure of the New England colonies and these several points will be made clear as we examine the course of events.

The commission of Sir Edmund Andros in 1686 directed him, with the advice and consent of his Council, "to agree with the Planters and Inhabitants . . . concerning such lands Tenem<sup>ts</sup> and hereditaments as now are or hereafter

<sup>7</sup> Cf. Osgood, *op. cit.*, III: 407.

<sup>8</sup> Cf. *Ibid.*, III: 406.

shall be in our power to dispose of'' and to grant them ''vnder such moderate quitt Rents'' as should be appointed. All grants were to be made under the ''Seale of New England.'' This general order might be interpreted to apply merely to the grants of unoccupied lands. That it was also intended to apply to occupied lands was clearly shown by his instruction which called attention to the existence of vast tracts in New England still at the disposal of the crown, which were to be granted with a quit-rent of not less than 2s 6d per hundred acres, and to other lands of ''defective title'' to which the royal confirmation might be wanting. The only possible interpretation of the latter part of this statement is that settled lands, titles to which had been rendered doubtful by the annulment of the Massachusetts charter, were also to be included.<sup>9</sup>

At any rate this was the interpretation which is borne out by the course of events. The point at which the Governor and the most influential Councilors directly aimed was land titles. Thus, as soon as his arrival in Boston, Andros began his short but tyrannical regime by attacking, among other things, the free tenure of land in Massachusetts. He gave public notice that the annulment of the charter had invalidated all land titles in Massachusetts and that confirmation in the future must include a quit-rent. He then called for a general examination of land patents.

This procedure naturally caused the ''utmost consternation.'' A few land holders, chiefly officers under the Crown or persons closely connected with the royal administration, sought confirmation of their lands under the new condition, but by far the greater number of inhabitants of Massachusetts refused to accede to the Governor's demands. They indignantly resented what they regarded as a high-handed attempt to saddle upon their lands feudal dues

<sup>9</sup> Publication of the Colonial Society of Massachusetts, *Collections*, II: 53; Bond, *op. cit.*, 43-44.



from which they had always been free. And the popular outcry was ably and eloquently voiced by such men as Increase Mather.<sup>10</sup>

The cause of the proprietors reached a crisis when the Councilors, particularly Randolph, began to petition for grants from the common and undivided lands in several towns and called for resurvey to be made of those lands.<sup>11</sup> Two of the more typical examples are Randolph's petitions for 700 acres of common lands in Cambridge and for 500 acres at Nahant Neck, respectively in the possession of the proprietors of Cambridge and the proprietors of Lynn.

The position of the Cambridge proprietors is outlined in their remonstrance and reply. In these two documents they pointed out that the title to their land is derived from the royal charter and the grant of the general court, and lawfully claimed for fifty years; that the lands petitioned for had been granted by the town to the several proprietors as witness the records in the Town Book and had been lawfully possessed and improved at a great charge since, and therefore "those Lands are neither vacant nor unappropriated as the patition<sup>r</sup> hath represented"; that those lands are the "great concernment to the Inhabitants" for "their necessary Supplies of Timber fire wood and Pasture" and the proprietors were already at a great charge in securing them with stone wall and gates; and that whether "ye formalities of the law binn in all the circumstances thei<sup>r</sup>of exactly observed" can not "rationally be expected from a people soe circumstanced as the first planters were, by whom those matters were acted in the Infancy of these plantations."<sup>12</sup> Against this Ran-

<sup>10</sup> Bond, *op. cit.*, 45.

<sup>11</sup> For land patents issued by Andros, see *Land Warrants issued under Andros, 1687-1688*. Publication of the Colonial Society of Massachusetts, *Collections*, II.

<sup>12</sup> March 7 and June 28, 1688. *Randolph Correspondences*, IV: 207, 211-213, 213-216.



dolph maintained the illegality of their procedure and insisted that his petition be granted. He concluded:<sup>13</sup>

“To w<sup>ch</sup> the Petr. answereth That in case the Inhabitants of Cambridge doe produce to y<sup>r</sup> Excellie. and y<sup>e</sup> Councill y<sup>e</sup> *Royall grant* to any person or persons of y<sup>e</sup> sayd Land peticoned for and from such person or persons, a legall conveyance to y<sup>e</sup> Inhabitants of y<sup>e</sup> sayd Town and that the sayd Town were by that name or what other name y<sup>e</sup> *same hath bin to them granted able and sufficient in the law to receive a grant of such Lands* Then y<sup>r</sup> petr. will cease any further prosecution of his sayd prayer, Otherwise the petr. humbly conceives y<sup>e</sup> Right still to remain in his Matie. and humbly prays a Grant for the same.”

In other words, Randolph alleged the lack of recognition of the royal title, the illegal conveyance, and the disability of the town to distribute land unless it had been incorporated under the express term of the law.

The “Objections” of the proprietors of Nahant Neck did not go back to the royal charter and the colonial grant in so many words. They claimed that the town of Lynn was legally possessed of the tract of land in question in 1635, that it had been divided and granted by “the voate of the Towne” in 1656, that it had been since possessed and improved by the proprietors, and that they also purchased the title from the natives.<sup>14</sup> Randolph’s position was very similar to that with which he had met the Cambridge proprietors. In a written reply he contended that, since there is no indication as to the time of the incorporation of Lynn and the source of the power of “receiving or disposing such lands” and since the few men mentioned in the paper as handling the problem of dividing land at Lynn “were not ffreemen of the Corporation of Lin but inhabitants only in the townshipp,” “*their town of linn is equall to a village in England & no otherwise.*” As such, Randolph

<sup>13</sup> March 17, 1688. *Ibid.*, IV: 218–220. Italics are mine.

<sup>14</sup> March 7, 1688. *Ibid.*, IV: 202–204.

inferred, the town of Lynn has no power to dispose of any land and the proprietors of Nahant Neck have no right to hold land.<sup>15</sup> Here again, then, Randolph is dealing with the town as a body not legally incorporated, the status of which is only comparable to the village in England, and hence possessed of no power to grant land.

A very similar view as that of Randolph was held by John Palmer, the Judge, in his "The State of New-England . . ." <sup>16</sup> After pointing out the necessity of recognizing the royal title and following the legal conveyances, he referred to the Andros' opinion that there was "no such thing amongst you as a Town" and explained:<sup>17</sup>

" 'Tis not to be presum'd, but his Discourse tended only to a Body Corporate and Publick: For you generally call that a Town in *America*, where a number of People have Seated themselves together, yet 'tis very well known, 'tis so in *Name* only, not in *Fact*: I take that Body of People to be a Town, properly so called, who by some Act of Law, have been *Incorporated*, and in that sense there is no such thing as a Town in the *Massachusetts*, neither wa there a Power to make such before his Excellency's Arrival [that is Andros'], for *One Corporation cannot make another.*"

Moreover, he maintained at length that the land which had been granted without the Seal of the Colony is invalid, that Governor Andros had the right to re-grant such land within his power, and that the common and undivided lands are inconsistent with the "Interest of new Plantations." <sup>18</sup>

To crown it all, the officials, including Andros, repeatedly declared in rough and imperious fashion that all lands in

<sup>15</sup> *Ibid.*, IV: 205-206. Italics are mine.

<sup>16</sup> Boston, 1690. *Andros Tracts*, I: 27-61.

<sup>17</sup> *Ibid.*, 47-48.

<sup>18</sup> *Ibid.*, 49-50. This case specifically referred to Col. Lidget to whom Andros granted a part of the common lands of Charlestown. See the case as represented by the proprietors of Charlestown, *Ibid.*, 97-98.

New England were the King's, this being emphatically true since the revocation of the charters. Indignant at these assertions, the proprietors went even to the extreme of denying the royal title in favor of the Indian title and God's title.<sup>19</sup>

Even where the possession of land was not threatened the legal formalities which were necessary to make good a title were irksome and costly. The best illustration is that of Joseph Lynde, a proprietor of Charlestown. When Lynde traced the title of his lands back to a grant of the general court and to an Indian deed, Andros told him that it was "nothing worth if that were all" and that the signature of Indians was of "no more worth than a scratch with a Bears paw." As Lynde owned several parcels of lands in the neighboring counties, Secretary West told him that he must take out as many patents as there were counties, if not towns, involved. When the cost of this made him pause, a writ of intrusion upon one of his tracts was issued. Lynde then gave Attorney-General Graham £3 and offered £10 in addition, with payment of court charge, if he would let the suit drop. Lynde was unsuccessful and was told that writs of intrusion would be very generally issued.<sup>20</sup>

But fortunately for the proprietors, this course of events came to a sudden stop in consequence of the overthrow of James II. at home and subsequently of Andros in America. A mass of contemporary evidence, including especially the numerous tracts to justify the revolution in Massachusetts, shows that Andros' land policy was one of the chief causes of his overthrow.<sup>21</sup> His attempt to revive the proprietary claims of the Crown and the feudal tenure of quit-rent in the New England colonies was as dramatic as it was futile.

<sup>19</sup> *Ibid.*, I: 88-89, 91-92, 97-98; Bond, *op. cit.*, 47-48.

<sup>20</sup> *Andros Tracts*, I: 91-93; Osgood, *op. cit.*, III: 408.

<sup>21</sup> Bond, *op. cit.*, 49.



Though the corporate colony of Massachusetts Bay was replaced by a Royal Province, the grievances of the colonists were recognized in the new royal charter of 1691 which vested the power of dealing with the land in the General Court and confirmed all patents which had been issued by the General Court. Besides this change in the form of the government, one of the most important results of the Andros' regime was the realization of the defects in the land system as it then existed. Thus, one of the very first acts of the reorganized Massachusetts General Court was to pass laws, regulating and legally incorporating both town and proprietors and confirming all existing common and undivided lands to the latter.<sup>22</sup> Henceforward, the colonies took absolute control of the land and the proprietors acted independent of any outside control.

In New Hampshire alone of all New England colonies the quit-rent remained in force and all land patents regularly imposed a small amount of quit-rent. But the proprietors and inhabitants were mostly from Massachusetts and Connecticut where the free tenure persisted and they refused to pay for the greater part and no serious attempts seem to have been made to collect the rents. If it was collected, it was not universal and the amount was small.<sup>23</sup> One of the chief reasons for antagonism to the New York grants in Vermont was the imposition of quit-rents and the collection of patent fees which the Green Mountain settlers looked upon as usurpation of their free tenure right.

## II. PROPRIETORS VS. NON-PROPRIETORS<sup>24</sup>

### TYPES AND PHASES OF CONTROVERSIES

We have already noted in the preceding pages how the proprietors evolved themselves into organized bodies and,

<sup>22</sup> See above Chapter III.

<sup>23</sup> See Bond, *op. cit.*, 51-61.

<sup>24</sup> This section is an expansion, with necessary additions to cover

as a result, how an early equality of rights gave place to an economic and political diversity and how the term inhabitant in nearly all New England towns came to include, not only the original proprietors and their successors, but also the "non-proprietors" who had no right of commonage nor shares in the common and undivided lands. At first the non-proprietors were small in number and relatively unimportant, but with the lapse of time they grew rapidly and soon began to outclass the proprietors both in number and importance. On the other hand, the proprietors remained comparatively a small and fixed group and controlled the town affairs. Thus, when the former outnumbered the latter, their revolt against the privileged class was inevitable and a collision of interests followed.

These controversies between the proprietors and the non-proprietors took diverse forms and were decidedly complicated. However, a careful analysis shows that they fall into one of the five following types: first, the revolt of the non-proprietors in general; second, the cottagers' claims; third, the complaints against absentees; fourth, the controversy between town and proprietors; and fifth, the trespasses and encroachments on the common lands. To this must be added, for the sake of completeness, a sixth, the controversies among the proprietors themselves.

### 1. THE NON-PROPRIETORS' REVOLT

The more general and common type of controversy was the revolt of the non-proprietors, or inhabitants in general, against the proprietors' privileges. The controversies at Haverhill and Newbury, Mass., furnish good illustrations.

the other New England Colonies, of the Chapter II of my manuscript thesis at the University of Chicago on "The History of the Division of Common Lands in Massachusetts: a Study of Conflicts between Proprietors and Non-Proprietors," 20-73. Many references are therefore omitted here.



The township of Haverhill was originally purchased by a few commoners<sup>25</sup> and, as in other towns, they or their descendants claimed the exclusive rights to the common and undivided lands. This distinction was made early against the new comers, but the latter's claim became so urgent and marked that the commoners, as early as 1700, began to take steps to protect their prized right. At the annual meeting of that year, the commoners ordered to discontinue division of land until "it be known who are the proprietors that have liberty to vote about the disposal of land." A committee was appointed for that purpose and the commoners' attitude toward the non-commoners was definitely mapped out.<sup>26</sup> The town, from that time onward, refused to act on any matter involving the proprietorship of the common and undivided lands<sup>27</sup> and the issue became purely between the commoners and the non-commoners.

The strong stand of the commoners withstood the demand of the non-commoners for nearly twenty years. But the conflict was by no means ended and the first crisis came in 1719. In that year, upward of twenty non-commoners protested against the commoners' monopoly of the town land and petitioned the selectmen to prevent the commoners from further dividing the common lands and to prosecute, at the town's cost, anybody who should encroach upon such lands. The selectmen refused to act but the demonstration induced the commoners to pass an important order, making "all the inhabitants of this town Proprietors in Common lands according to the charges they have borne in the town

<sup>25</sup> The term "commoners" was more commonly used at Haverhill and I have adopted it here to bring out the local color.

<sup>26</sup> Chase, *History of Haverhill*, 204-205, 215-216.

<sup>27</sup> In 1702, for example, the town refused to deal with the land in reply to a petition of Joseph Peasely for an exchange of land. *Ibid.*, 205.



in the time of war.”<sup>28</sup> A committee was appointed to carry out the order but nothing seems to have resulted from this great concession.

Early in the spring of the next year the conflict was resumed and the town tried to arbitrate the matter but the commoners dismissed the proposal as premature. The non-commoners then took a drastic measure to control by themselves the entire power of selling and granting land and appointed a committee to lay out forthwith the land in question in fifty-acre lots.

The non-commoners' demands, thus denying the commoners' right to the common lands, may be summarized as follows: (1) that the territory had been originally granted to the inhabitants of the town in general and that the undivided lands still belonged to all who are legal inhabitants of the town; (2) that each of such legal inhabitants is entitled to “an equal interest, or proprietorship, in such lands”; (3) that unless steps be taken at an early date all such common lands will be illegally divided up among the commoners alone; (4) that the boundary of the Cow-Commons, which had been much reduced, should be restored to the original dimensions; (5) that there be immediate grant of land upon recognition of these principles.

Against these claims the commoners maintained that they were “the heirs and assigns of the original purchasers” and that those to whom lands had been granted since that time could “only claim the amount of land that the proprietors had specifically granted them.” In other words, they claimed that their ancestors had purchased every inch of the territory and they were therefore the sole proprietors of it and that grants and sales which were made subsequent to the original purchase, by the proprietors as a body, did not carry with them any interest in the remaining

<sup>28</sup> Details will be found, *Ibid.*, 250–251.

undivided lands, only affecting the title to the particular lands thus alienated.

The controversy continued with intervals until December, 1723, when the commoners took a more conciliatory attitude. They appointed a committee to debate the matter with the non-commoners and find out what would satisfy the latter. As a result the committee granted lands to thirty-nine non-commoners upon a condition that they sign an article to the effect that they remain contented for the future and that they pay certain charges to the committee for such division. This was a liberal concession on the part of the commoners, but it is important to note that the commoners stood firm on the point of granting the subsequent right on any divisions; they never conceded this right to the non-commoners. Thus, no matter how great the concession was, no sooner did the commoners fully decide to lay out land upon this basis than the opposition broke out afresh.

The open hostility at the annual meeting on March 2, 1725, was so great that the commoners, at last finding themselves in a miserable minority, withdrew and organized a separate meeting and chose a separate set of town officers. The non-commoners went on contending for the recovery of "their rights" in the commons "from the Incroachment of ye Comoners" and for petitioning and informing the General Court of the irregular method of the commoners. They elected two committees to carry out these ends. At the April meeting they reaffirmed their previous proceedings in entirety and declared that the officers previously chosen be supported through any difficulty which might arise in executing their respective duties, that the small party of the March meeting "was not according to the town's will, nor according to ye consent & former practice of our Town," that the former town clerk be deposed, and that the selectmen should prosecute to final issue any person that by



color of election should presume to act as town officers. In this way the controversy went so far as to affect the whole political machinery of the town.

Having come to this dead-lock in the town's life, an attempt to elect town officers in June, 1725, failed. The non-commoners then appealed to the General Court, which body issued a warrant, calling a town meeting for the election of officers.<sup>29</sup> This prompt and energetic action of the Court had the desired effect. The town met accordingly and completed the election of officers. From this time on the town and the commoners became entirely separate bodies and the commoners alone continued to grant, sell, or exchange the undivided lands. In this work the latter remained unchecked until 1763 when their last meeting is recorded.<sup>30</sup>

The result of the controversy at Newbury, in contrast to the one just described, was decidedly in favor of the non-proprietors. At Newbury the seed of controversy was planted in 1642 when the proprietors passed an order,<sup>31</sup> defining their position and limiting their number to ninety-one and excluding all other inhabitants of the town from any right or title to any part of the common lands. This order, while the inhabitants of the town were few and the demand for land was not so urgent, was merely a group of

<sup>29</sup> *Mass. Acts and Resolves*, X: 585.

<sup>30</sup> In 1736 a general division of all common meadows was made among the commoners exclusively, according to the original grants. Evidently the non-commoners did not get any fruit of the controversy.

<sup>31</sup> Dec. 7, 1642: " . . . the persons *only* above mentioned are acknowledged to be freeholders by the town and to have a proportionable right in all *waste lands, commons, and rivers* undisposed of and such as by, from, or under them or their heyers have bought, granted, or purchases from them or any of them theyr right and title there unto and *none else*." *Newbury Proprietors' Records*, I: 44ff.



words insignificantly written on the record book. But as the inhabitants grew in number, the demand for land became urgent and the possession of even a small tract of land became highly valued. Consequently this paper vote began to assert itself. As early as 1679 and 1680, the proprietors, aware of the value of their commons, attempted to devise a plan to divide them among themselves but failed because there was deep-seated dissatisfaction among the non-proprietors who also made several attempts to own and occupy the commons equally with the proprietors. Four years later, in 1684, the proprietors finally decided to carry out the division and appointed a committee to agree upon a rule of division. The committee, remembering the agitations among the non-proprietors during the previous years, attempted a compromise in favor of the latter class and reported that the non-proprietors also should get some shares in the division.<sup>32</sup> The proprietors protested against such a proposal and postponed further proceedings upon the previous vote.

The discontent among the non-proprietors continued for two years when they formulated their demand in a written protest:<sup>33</sup>

“We think it hard to be deprived of the right of commonage. We pay according to our property as much as you freeholders for the support of public worship, the support of schools, the repairing of the roads, and our equal proportion of all other taxes, and some of

<sup>32</sup> They pleaded that, of the 6000 acres of the upper common to be divided, 5000 acres be divided among the proprietors and the remaining 1000 acres to be proportioned among non-proprietors and soldiers. It will be seen that the final settlement went further than this concession.

<sup>33</sup> The freeholders in Newbury were same as the proprietors. “A freeholder was one, who either by grant, purchase, or inheritance, was entitled to a share in all the common and undivided lands.” Coffin, *Sketch of the Town of Newbury*, 146.

us has served as soldiers for your defense, and yet you have right and privileges, of which we are deprived.”

The controversy was now beginning to touch the heart of town's civil, economic, and even religious life. Consequently, some of the rich freeholders realized the seriousness of the problem and assisted the non-proprietors in partially accomplishing their object. On March 23, 1686, the meeting of “the freemen and the freeholders”<sup>34</sup> established a rule of division by which each freeholder was to have twenty acres of land laid out. This excluded the non-freeholders and the complaints were made in the following month. A meeting was called anew in May and a committee was appointed to “agree upon a meet way of dividing the commons.” This committee worked laboriously for five months, trying to end the whole matter peacefully, and reported its agreement on October 20th. The meeting approved of the report and voted that 6000 acres in the upper common be divided as follows: 3000 acres among the proprietors in equal shares; remaining 3000 acres “among all such inhabitants of this town and freeholders as have paid rates two years last past, proportionable to what each man paid by rate to the minister's rate in the year 1685.” The division was made accordingly and the controversy came to an end with this great concession.<sup>35</sup>

<sup>34</sup> At Newbury, it may be noted, the land questions were discussed at the town meeting by the “freemen and freeholders” together which made it very difficult to agree. It shows that in the early days, the town and the proprietors were practically same.

<sup>35</sup> The radical party of the proprietors was dissatisfied with this great concession and made several protests. On Jan. 26, 1688, nine of them drew up a protest against what they termed “the injurious and unreasonable dealing of some invading, and disposing of the town's commons” and declared that “whatever is already done to the dividing and proportioning our commons may be made void and nulled.” Nothing resulted from these demonstrations and the divisions were carried out peacefully in 1686, 1702, and 1708.



A similar controversy at Duxbury, Mass., was short and not so hotly contested but the non-proprietors' demands are worth quoting. When the proprietors and the town, the latter being under the influence of the former, proceeded to divide the common lands, upward of twenty-seven non-proprietors drew up a remonstrance, strongly protesting against such an action. A central thought in their complaints was the equality of right and they maintained that all lands in the township are intended to "all the inhabitants," admitted by the town and holding some freeholds by purchase or gift "and are not excluded by the act of the General Court." In thus completely denying the proprietors exclusive right the remonstrance put forward three reasons: (1) "Because the common lands were never granted to the owners of the Court grants, but to the inhabitants of the town . . . in perpetual succession, and not to particular persons"; (2) "Because it can by no means be made to appear who had Court grants, and the quantity of land granted" as there is no record of the same; and (3) because "the said action and resolutions referred to in the second article above was never accepted or allowed or approbated by any vote of the said town but suspended further consideration and entered into record without town's order, thereby making it "null and void."<sup>36</sup> This is a typical case of the nullification on the part of the non-proprietors.

The non-proprietors' defiance of the proprietors at Billerica, Mass., had a more fortunate result. It finally drifted into the General Court and their petition is equally suggestive of the nature of their complaints. In the preamble the petitioners stated that they represent the great bulk of the people who have been many years inhabitants of the town; that they paid their full proportion of rates, taxes,

<sup>36</sup> *Old Records of the Town of Duxbury, Massachusetts, 1642-1770*, 199-200. See also 203, 208, 210, etc.



and charges with their neighbors who were the first proprietors; and that now they are to be excluded from sharing in a division of the common lands. This last action of the proprietors seemed to the petitioners "against all justice and equity" and they prayed for redress. The action of the Court was favorable to the petitioners, the order reading:<sup>37</sup>

"... the petitioners that are Freeholders and Inhabitants of the said town of Bilrica, be Instituted and have a proportionable share with others, the Common Proprietors and Inhabitants of the said Town, in all future divisions of all undivided and Waste lands belonging to said Town, according to the proportion to the Town charges, for the space of seven years past."

Similar controversies were also common in Connecticut. The non-proprietors' claims at New London were "protracted and acrimonious." The matter was finally referred to the General Court by petitions and the proprietary right was upheld, barring the non-proprietors from it forever.<sup>38</sup> In the division of 1754 at Hartford, the "ancient proprietors" and their successors were disturbed by the inhabitant non-proprietors and their claims were only established after a prolonged legal suit.<sup>39</sup> The controversy at Windsor also resulted in a proprietors' victory.<sup>40</sup> In every one of these cases and in others as well,<sup>41</sup> the non-proprietors' claims

<sup>37</sup> *Mass. Acts and Resolves*, VIII: 122, 148. The proprietors appealed with complaints but they did not get any remedy. *Ibid.*, VIII: 179, 199, 201.

<sup>38</sup> Mead, *op. cit.*, 66-68; Caulkins, *History of New London*, 263.

<sup>39</sup> Love, *Colonial History of Hartford*, gives the controversy in detail with necessary source materials.

<sup>40</sup> Connecticut Archives, Towns and Lands, *Mss.*, VI: 67; VII: 109, 110, 111, 116ff.

<sup>41</sup> See for example, *Ibid.*, II: 258, 268; *Conn. Col. Rec.*, X: 332; Records of the Original Proprietors of the Town of Union, *Mss.* (hereafter cited as Union Proprietors' Records, *Mss.*), 24, 40-41, 130, 135, 154, 156, 175; Larned, *History of Windham County*, I: 156, 214ff.

were similar in fundamental principles to those of the Massachusetts controversies and no repetition is necessary here. In practically every case in Connecticut the proprietors won out.<sup>42</sup> The proprietors of Providence, R. I., were much more conciliatory toward the cause of their rival claimants and, in addition to granting full proprietary rights to the "new comers," the proprietors also granted twenty-five acres with "right of commoning" to each of the non-proprietors who came to be called the "Quarter Right Men."<sup>42</sup>

## 2. THE COTTAGERS' CLAIMS

The "cottagers," sometimes known as "squatters," formed a distinct class among the non-proprietors and their claims mark the earliest protest against the proprietors and their privilege. The cottagers were usually received into towns with a right to build a cottage upon some bit of waste land, usually common and undivided lands, but without any recognition of proprietary right therein. In some towns they were granted house lots to be held during the town's pleasure.<sup>43</sup> In general they were less well-to-do and in many cases were working men or servants whose thrift alone enabled them to build their cottages. Some even acquired a freehold by patient industry in the older towns but their struggle in the beginning was hard and miserable. By paying a small amount of rent, often by produce or by service, they usually received and enjoyed certain rights of commonage, for example to wood, turf, and pasture; they often cultivated in common a certain portion of the arable lands and gathered hay from certain common meadow. In other words, they built cottages and

<sup>42</sup> Dorr, *Providence Proprietors*.

<sup>43</sup> See for example, Salem. Adams, *Village Communities of Cape Anne and Salem*, 65.

lived and worked mostly on the commons, but had no right of ownership in them.<sup>44</sup>

The cottagers were poor and powerless at first, but they gradually grew in strength, both in number and wealth, and, already living on the commons, began to assert their admittance to the proprietary privilege. Their claims are obvious under the circumstances: they wanted, first, to gain complete title to the land upon which they lived and had already built their houses, and, secondly, to gain right of commonage by reason of having houses and lands. The history of their struggle is the history of the steps by which they gained these claims.

The earliest agitation of this class is to be found in Malden, Mass. There the cottagers asserted their claims as early as 1651, when an agreement was made between Charlestown and the settlers of Malden that the right of commonage in the latter place should be limited to the existing number of dwelling houses. The cottagers' cause at Ipswich was somewhat more bitterly fought out and the controversy continued until 1660 when, getting no concession from the proprietors, the cottagers petitioned the General Court. The General Court acted favorably toward the petitioners but itself being strongly tinged with proprietary color, denied the right for the future cottagers. This decision found its expression in the form of an Order which was passed on May 30, 1660.<sup>45</sup> It declared:

“It is ordered, that hereafter no cottage or dwelling place shall be admitted to the privileg of comonage for wood, timber, & herbage, or any other the privileges that lye in comon in any toune or peculjar, but such as already are in being or hereafter shall be erected by the consent of the toune.”

<sup>44</sup> The institution of cottagers was not universal, even in Massachusetts. Its existence seems to have been limited to the coast town where poor immigrants first appeared.

<sup>45</sup> *Mass. Col. Rec.*, IV, Pt. 1, 417.



This order was confirmed and incorporated into an "Act for regulating townships . . ." in 1692.<sup>46</sup> It marks the first important concession to the cottagers as well as the non-proprietor element and also the first legislation on the cottagers in Massachusetts; it incidentary forms the basis of all future settlements.

As to the subsequent movement, Salem furnishes a typical example, although there were other instances equally interesting.<sup>47</sup> At Salem we can trace at least two distinct stages of the controversies: the one ending in 1702 and the other ending in 1714.

The cottagers in Salem, originally poor and landless, but now mostly possessed of a small holding by thrift and purchases, grew in number during the second half of the seventeenth century. They were also strengthened by the "new comers,"<sup>48</sup> a more or less wealthier class which had pressed into the village communities of Massachusetts and which, by reason of its wealth, had obtained lands, although, like the cottagers, they were kept out of the proprietary right altogether. These gradually formed a strong party, so strong that, toward the close of the century, they even began to overthrow the proprietors and the descendants of the old comers and control the town meetings. Thus the proprietors, better known as commoners in Salem, began to break away as early as 1678 "from the restraint of the town as to the regulation of their territory"; while the non-proprietors attempted to organize according to the law of

<sup>46</sup> Nov. 16, 1692. *Mass. Acts and Resolves*, I: 65.

<sup>47</sup> See for example the cases at Cambridge and Worcester, Mass. Lincoln, *History of Worcester, Massachusetts, to 1836*, 45-46; *Records of the "Proprietors" of Worcester, Massachusetts* (hereafter cited as *Worcester Proprietors' Records*), 60-62, 64, 220-221; *Cambridge Proprietors' Records*, 167; Corey, *History of Malden, Massachusetts, 1633-1785*, 368, 370.

<sup>48</sup> See Adams, *Village Communities of Cape Anne and Salem*, 67ff.

1660 but the selectmen positively prohibited such a meeting as disorderly.

The old comers and the commoners in Salem seem always to have constituted the dominant element in the town meetings and controlled the machinery of the local government. With the rise of the cottagers and the new comers the new element was asserting itself to control that old aristocratic village town. The commoners were conscious of this fact, as well as the growing dissatisfaction of the cottagers, and passed the following important act in 1702:

“For ye incouragement and growth of this town, that all freeholders of this town, viz., every one yt hath a dwelling house and land of his own proper estate in fee simple, shall have and is hereby admitted unto ye privilege of commonage.”

This meant that all cottagers who had possessed lands and dwelling houses built prior to 1702 were admitted to the full privilege of commoners' right, forming the second stage in the cottagers' climb.<sup>49</sup>

The cottagers' demonstrations did not end here, however, and the next great concession came in 1714. In 1713 the commoners tried to organize themselves according to the Province Law of that year, but they again faced the cottagers' opposition. In that year there was a renewed agitation among some of the cottagers. They were evidently those who had failed to obtain their right by the order of 1702. Notwithstanding the impediment of this kind, the commoners organized themselves on Nov. 16, 1713,<sup>50</sup> and, continuing the attitude of good will, appointed a committee

<sup>49</sup> Although the Act of 1660 was local in its application, it was practiced at Salem and virtually took the place of the first concession.

<sup>50</sup> For the obstruction of the proprietors' meeting by the non-proprietors and cottagers, see *Salem Commoners' Records*, Essex Institute Historical Collections, XXXVI: 162-168.



to receive the claims of such as make out their rights according to the Province Law of 1660 and the Town Law of 1702 and also to consider, among other things, "such persons further as they judge should be admitted to a right in the common land."

This committee, not only received the claims and admitted 941 cottagers, but also reported on Nov. 22, 1714, an important measure which was immediately approved at the commoners' meeting. The new document, among other things, declared that the period in which to receive the claims of those who have neglected to bring in such claims be extended to a longer space; "that all dwelling houses built in the town of Salem since the year 1702 . . . are admitted to and allowed a right in the common lands in Salem"; that 400 acres of the commons be reserved for the further and later claimants above named; and that there be a division of the commons on this new basis. The principle thus defined was actually carried out<sup>51</sup> and, although controversies occurred from time to time, the same principle of concession on the part of the commoners settled the difficulty peacefully ever since.

### 3. THE ABSENTEE PROPRIETORS

The system of absenteeism was almost universal, but its evils were not felt in the seventeenth century as much as in the eighteenth century. The principal reason for this is that the number of non-resident proprietors was small in the earlier years, whereas it increased with leaps and bounds with the coming of land speculation in the eighteenth century. We shall have occasion to consider the absentee proprietors and their relations to the troubled subject of delinquency later at a proper place; here we may

<sup>51</sup> One hundred and ninety-one odd cottagers were admitted before 1722. *Ibid.*, XXXVII: 110-121 for such a list.



note the general nature of the non-proprietors' complaints against the practice.

One of the earliest cases of the non-proprietors' defiance against the absentee proprietors is that of Braintree, Mass. Most of the land in Braintree was held by the wealthy proprietors in Boston and the long controversy culminated into a crisis in 1698. In that year the question of the undivided lands in Braintree became very vexatious and sixty-nine freeholders of the town, in January, formally covenanted one with the other to defend their "ancient Rights & oppose in a course of Law, those, and all those that shall by any means disturbe, molest, or indeavor to dispossesse" any part of their land; and they promised to bear as a common burden all charges which might arise out of the law suits in this connection. Following this declaration of independence against the absenteeism, actual evidence of legal proceedings is found in Braintree records.<sup>52</sup>

This determined attitude brought about a favorable development on the part of the absentee proprietors in the form of a compromise. On Jan. 26, 1700, a body of Braintree freeholders agreed to purchase all the waste lands within the town limit from the Boston claimants for £700. In order to prevent effectively a repetition of absentee experience, it was at the same time further agreed in a public meeting that no purchaser of these lands should make any conveyance of them to any outsiders "thereby to let them have a foothold or interest in ye Purchase or any other way."<sup>53</sup> The purchase money was raised by voluntary subscription through the effort of an association consisting of one hundred inhabitants of Braintree, and the Boston claims were finally extinguished and the absentee proprietorship was swept away.

<sup>52</sup> For example, *Records of the Town of Braintree, 1640-1793* (hereafter cited as *Braintree Town Records*), 94, 99, 101, 138, etc.

<sup>53</sup> *Ibid.*, 44.

In Lancaster, Mass., the evil of absenteeism was recognized early and the town, acting in the interest of the inhabitants, in 1657, barred the absentee proprietors from any right and privilege in the town. The reasons set forth were four-fold: (1) that the forfeiture of the right of the original proprietors who refused to become residents prevents many of the best lots of the town from remaining in the hands of absentees and unsettled; (2) that it is necessary that the first settlers should dwell close together, while the absentee proprietors break up this arrangement of defense; (3) that the absentee proprietors profit by speculating on the rise of the price of land without sharing in the toil and danger of actual improvement; and (4) that they cause disorderly conditions in the town life often by sending men of loose habit and evil character to cultivate their lands.

The reasons for discontent are clearly brought out in the petition of the inhabitants of Deerfield, Mass., addressed to the General Court, March 3, 1678. It stated among other things:

“You may be pleased to know the very principle & best of the land; the best soile; the best for situation; as lying in ye centre & midle of the town; & as to quantity, nere half, belongs unto eight or 9 proprietors each and every of which, are never like to come to a settlement amongst us; which we have formerly found grievous & doe Judge for the future will be found intolerable if not altered . . . . Or minister . . . & we ourselves are much discouraged as judging the Plantation will be spoiled if thes proprietors may not be begged, or will not be bought up on very easy terms outt of their Right. But as long as the maine of the plantation lies in menIs hands that can’t improve it themselves, neither are like to putt such tenants outo it as shall be likely to advance the good of ye place in Civil or Sacred Respects; We, ourselves, and all others that think of going to it, are much discouraged . . . .”

The petition was referred to a committee but nothing important resulted therefrom.<sup>54</sup>

Another petition to the General Court enumerated the following sources of trouble: (1) that they, the non-resident proprietors, did not settle upon their rights; (2) that they have not sent any others to settle there; (3) that they have neglected to pay their part of the charge for the support of the minister, (4) that they neglected to pay the charges for the other necessary expenses of the said town.<sup>55</sup>

Even in these few cases, if we read between lines, we can clearly see that several important principles of early town life were involved in the difficulties over the absentee proprietors. These principles may be summarized as follows: that the land must be occupied, settled, and improved by the owner thereof or his appointee; that the toil and effort of settlement, both in building and maintenance, must be borne equally by the owner with the actual settlers;<sup>56</sup> that the ownership of the town lands, not the actual settlement or appearance in town alone, should be the basis of taxation; and that the peace and welfare of the town must be maintained by the unification of town life, through the correlation and cooperation of all who are connected with the town.

#### 4. THE TOWN VS. THE PROPRIETORS

As was noted in the earlier chapters, the town and the proprietors were the same in the earlier years and their respective rights with regard to the common lands remained loose and ambiguous in many towns, even after the organi-

<sup>54</sup> For subsequent conflict, see Sheldon, *History of Deerfield*, I: 193-194; *Mass. Col. Rec.*, V: 209.

<sup>55</sup> The petition of the inhabitants of the Narragansett Township No. 2, now Westminster. Nothing resulted. *Mass. Acts and Resolves*, XIV: 292.

<sup>56</sup> This is significant in the light of dangers from Indians in the frontier towns.



zation of the proprietors as a separate body. This lack of distinction between town and proprietors caused much controversy when the latter asserted their exclusive right over the common and undivided lands.

The town of Northampton, Mass., always claimed the right to order all land divisions, while the proprietors asserted that it was their right and the two bodies were like oil and water for many years. The crisis arrived in 1742 when the town took a definite action. In January of that year, the town meeting discussed the land question at length and went on record:

“Whereas there has been a Controversie long Subsisting between the Town and proprietors respecting their Rights to the Undivided Lands Near the Body of the Town, Town Voted to Choose three Wise, Judicious persons to advise between them with respect to their Rights to the Lands above said and also to their right of Cutting of wood, Timber, &c., on the Lots laid out.”

Then it went further and empowered this committee “to provide an attorney at the cost and charge of the town to manage the cause on behalf of the town and defend their right.” No further proceeding is known. Next year the town again took up the matter and reached a compromise. The town gained control of a certain portion of the common lands for the space of ten years and at the same time voted “to quit, release, and relinquish to the respective proprietors all the rights and liberty to cut wood and timber.” There was great rejoicing<sup>57</sup> on account of this settlement

<sup>57</sup> A letter of Edwards, written in 1753, is often quoted: “And it is a thing greatly to be rejoiced in that the people very lately have come to an agreement and final issue, with respect to their grand controversy, relating to their common lands; which has been, above any other particular thing, a source of mutual prejudice, jealousies, and debates, for 15 or 16 years past.” Quoted in Trumbull, *History of Northampton*, II: 95, foot note.

and the matter rested quietly for ten years when, in 1754, another crisis was reached.

In 1754 the town reasserted its "right to all lands within the bounds of the town of Northampton" which were not yet divided. It then chose a committee and boldly proceeded without even consulting the proprietors to devise some method of dividing the lands thus claimed. It even voted to commence suits to recover all the lands alluded to in the above vote because some proprietors had of late years "without right entered and taken possession of some parts of said lands" and another committee was appointed to carry out the measure. In May it went further and proceeded to prosecute the trespassers, thus taking over practically all the functions of the proprietors into their own hands. The proprietors, through the help of some of the town officers, tried in August to revoke all these alleged illegal proceedings of the town but failed, and in the following month we find the town bringing up actual law suits. The controversy drifted on until 1756 when certain four square miles were reserved for the inhabitants for ten years and the town finally "released and quitclaimed" all its rights to the common lands. Thereafter the proprietors remained the unlimited master of their common and undivided lands.

In Plymouth, Mass., where the town had entire jurisdiction over the common lands in early days, there was similar trouble. In 1766, when the matter of calling the proprietors' meeting was questioned, the town appointed a committee to investigate and its report shows a complete denial of proprietors' power over the sheep pasture which was in question.<sup>58</sup> In supporting this claim, the report reasoned, among other things, that the town disposed of the common

<sup>58</sup> The full report is in the *Records of the Town of Plymouth, 1636-1783* (hereafter cited as *Plymouth Town Records*), III: 178-181.

lands as it thought fit till 1704 and would have done so ever since if it did not exclude itself therefrom, that the proprietors derive their power from the town by virtue of the town grant, that no part of the commons was granted to them that was settled before by a town vote, that the proprietors assented to this principle at their first meeting in 1704 and also in 1716, and that the proprietors called the division of 1711-12 as their last division thereby renouncing all other subsequent claims. A committee was immediately appointed "to take proper steps to prevent encroachment on it and to plan some method of future improvement of it for the town's better advantage." No further procedure in the controversy, nor any further prosecution of the proprietors' claim, remain on the record; evidently this strong stand on the part of the town overruled the proprietors.

In Woburn, Mass, in 1741, the town attempted to nullify the distinction between the proprietors of common lands and the other inhabitants of the town and to prosecute the proprietors' committee as intruders in making divisions of those lands from time to time under what the town called their pretended right. The attempt, however, completely failed due mainly to the decree of the General Court which was passed nearly seventy years earlier, recognizing the proprietary right.<sup>59</sup>

The controversy at Suffield, Conn., was interesting. There the town had complete power over the common lands until 1712<sup>60</sup> when it renounced that right in favor of the proprietors by a resolution.<sup>61</sup> Nevertheless, the town proceeded to exercise that renounced right and granted lands to the inhabitants, without consulting the proprietors, on

<sup>59</sup> The decree referred to is in *Mass. Col. Rec.*, IV, Pt. 2, 354-356.

<sup>60</sup> Sheldon, *Documentary History of Suffield*, 170, 188.

<sup>61</sup> Passed on March 31, 1712. *Ibid.*, 172.



two occasions, March 25 and April 2, 1713.<sup>62</sup> An inevitable opposition to these proceedings broke out among the proprietors. After a fruitless negotiation with the town, the proprietors, on March 22, 1714, nullified the town's action and declared that there should be no record made of the land granted previously by the town.<sup>63</sup> The conflict dragged on without result until the next year when, in August, the proprietors made a fresh protest. The town finally suggested the termination of the difficulty by the court and the case was heard in the County Court.<sup>64</sup> The Court, after going over the facts of the case, annulled all the town's proceedings on Jan. 10, 1716, and the conflict saw a peaceful end.<sup>65</sup>

In Simsbury, Conn., as early as 1672, a controversy arose as to whether the "uplands" belonged to the original proprietors or to the town. The town claimed the right and a division was made by its vote in 1672; similar divisions were also voted in 1680 and 1688 and 1698, against all of which the proprietors protested ineffectually. The question again arose in 1719, when a committee appointed for the purpose reported and the town voted

"that the right of disposal of the common or undivided lands in the township of Simsbury is, and shall be, vested in all such, and in them only, who can derive their power so to do either from an act of the General Assembly and their heirs and assigns, or those who have been admitted inhabitants and their heirs and assigns, by a major part of the town regularly convened, or shall be hereafter admitted inhabitants with that right and power of disposal expressly inserted in the town's vote for admission."

<sup>62</sup> *Ibid.*, 177, 178-181. Another attempt was made later on May 14, 1714. *Ibid.*, 187-188.

<sup>63</sup> *Ibid.*, 185-186.

<sup>64</sup> *Ibid.*, 189, 190.

<sup>65</sup> *Ibid.*, 194-195, 178, foot note. Another grant was made by the town while the Court was considering the question but failed on account of the Court's decision. *Ibid.*, 192,

After voting to divide the land, the town added "that the remaining land be sequestered to the town, qualified as above, to be granted as the major part shall allow of, said major part to be accounted by a true list of the ratable estate." To this action of the town the proprietors protested again in vain. The town, possessing the numerical strength, continued to grant the undivided lands until the action of the General Court sustained the contention of the proprietors, after which the remaining common lands were managed and divided exclusively by the proprietors.<sup>66</sup>

In Falmouth, Maine, the proprietors and the town were in hostility from the town's incorporation in 1718. In 1728, the town voted to admit new inhabitants with shares in the common lands upon payment of £10 to the town's treasurer.<sup>67</sup> The proprietors protested and petitioned the General Court for relief. Among other things, the petition maintained<sup>68</sup> that

"it can't be Meant that all the Inhabitants that were not before Proprietors were thereby made Prop<sup>rs</sup>: or that the Inhabitants in a Town Meeting were thereby enabled to Vote in and settle fifty Proprietors of the Common & undivided Lands throughout the Town."

And it continued:

"But the plain sense is as We Most humbly conceive, that, the Inhabitants shall have Town meetings & Act as a Town, and the Proprietors shall have their Meetings . . ."

<sup>66</sup> Phelps, *History of Simsbury, Granby and Canton, 1642-1845*, 80-81-82; Mead, *op. cit.*, 66.

<sup>67</sup> Willis, *History of Portland*, 329, 330, 331, Appendix, 890-892. In 1718 the General Court gave right to the proprietors to admit 50 families but the town took it upon itself so to do.

<sup>68</sup> *Documentary History of Maine*, X (*Baxter Manuscripts*), 421-423, 423-427.

Getting no relief immediately, the rival meetings<sup>69</sup> wrangled against each other until 1731, when the superior court at Boston, in deciding one of the cases in controversy, established the right of the proprietors instead of the town.<sup>70</sup>

### 5. THE ENCROACHMENTS AND TRESPASSES

One of the difficult tasks in every town was the regulation of the felling of timber on the common lands. This was important and required serious attention because there was a genuine dread of losing the supply of wood and because the town sought both to limit the destruction of timber and to confine the benefit and privilege to their own inhabitants.<sup>71</sup> Accordingly the timber and also stones and gravel on the common lands were valued highly and were from an early date carefully guarded. In many cases the town itself had full jurisdiction over the task, where the town had charge of granting land; while in others the proprietors claimed and exercised their right over it in conjunction with their power to deal with their common and numerous evaders of town or proprietary rules, the so-undivided lands. Because of these policies there appeared called trespassers and encroachers; they utilized the common lands for timber and stone without due permission obtained from the proper authorities. These "silent invaders," indeed, were the source of constant troubles in nearly all proprietries.

As in the case of the division of lands, the protection of trees and stones in the common lands was not so urgent an

<sup>69</sup> See the *Journals of Rev. Thomas Smith*, 67-68, for some description of these stormy scenes at the rival meetings.

<sup>70</sup> *Documentary History of Maine*, XI (*Baxter Manuscripts*), 177-179, 179-181; Willis, *op. cit.*, 331-336. The former gives some law suits.

<sup>71</sup> Weeden, *Economic and Social History of New England*, I: 60.



affair at first. The whole question blazed up into flame only as the population increased and the inhabitants began to build and expand. The evil of trespasses was thus taken cognizance of early by the colonial governments. The Massachusetts Act of 1693 decreed that the proprietors and freeholders alone have the right of feeding horse or horse kind in the common lands<sup>72</sup> and during the ensuing year it was ordered that they alone have right to use trees therein.<sup>73</sup> In 1698 a more elaborate law was enacted, forbidding the inhabitants to carry away timber from the common lands without license under pain of forfeiture and fine—20 shillings each for trees of one foot or over in circumference and 10 shillings each for smaller.<sup>74</sup> The Act of 1722, not only confirmed the same principle, but went further and doubled the fine and also prohibited the taking of stones, gravel, clay, etc., under penalty of forfeiture and payment of treble damages or a sum not exceeding £5.<sup>75</sup> Similar acts which followed provided for even more severe methods of prosecution.<sup>76</sup> In Connecticut the first legislation upon this subject also dates from 1693, when penalties were defined minutely for all trespasses upon enclosed common lands without leave of the proprietors in possession.<sup>77</sup> Then followed a series of laws, all laying down principles similar to those of the Massachusetts Bay Government; the proprietors were even empowered to bring suits against trespassers to order to guard their lands.<sup>78</sup> While these laws barred the non-proprietors from the use of timbers and stones in the common lands, the proprietors, in their

<sup>72</sup> *Mass. Acts and Resolves*, I: 138.

<sup>73</sup> *Ibid.*, I: 156.

<sup>74</sup> *Ibid.*, I: 324–325.

<sup>75</sup> *Ibid.*, II: 300–302.

<sup>76</sup> *Ibid.*, II: 383–385; 424–425; etc.

<sup>77</sup> *Conn. Col. Rec.*, IV: 99.

<sup>78</sup> *Ibid.*, VI: 449–450; VII: 34, 80–81, 199, 405, 519; etc.

turn, were required to maintain the common lands well fenced so as to keep out the trespassers, and the office of fence-viewers was common in nearly all New England towns.<sup>79</sup>

The proprietors' action against such trespasses and encroachments is typified by that of Watertown, Mass., where the proprietors' records are full of votes and executions with regard to these silent invaders. As early as 1714, and during succeeding years, the proprietors chose special committees "to maintain and defend" their "right in the common and undivided lands and to prosecute in the law such as have of late encroached upon it or got into possession illegally." The full expense in this work was paid by the proprietary treasury.<sup>80</sup> They even went so far as to "represent themselves in any court or town meeting to preserve and defend their right." Their records show that a special committee of this kind was active for over twenty years, always finding plenty to do against the elusive silent invaders.<sup>81</sup> It may be added that this type of controversy rarely broke out into an open conflict; the trespassers and encroachers were merely silent intruders upon the proprietary domain.

Similar action of the proprietors may be read on almost every page of the Dorchester Town Records.<sup>82</sup> Complaints of trespasses on the common lands, especially of cutting woods, grasses, and hay, were constantly made at Buxton,

<sup>79</sup> The Massachusetts Act of 1698 provided that fences of the commons should be maintained by proprietors "according to their interest therein." *Mass. Acts and Resolves*, I: 333-335. See also *Mass. Col. Rec.*, II: 39, 49, 195, etc. *Conn. Col. Rec.*, IV: 346; V: 234, 403; VII: 309, 379, 408, 467; VIII: 166, 168; etc. *Mass. Acts and Resolves*, *Conn. Col. Rec.*, and *R. I. Col. Rec.*, are full of such resolutions. See Index.

<sup>80</sup> *Watertown Proprietors' Records*, 151, 152, *passim*.

<sup>81</sup> *Ibid.*, *passim*; see especially 180-181.

<sup>82</sup> *Dorchester Town Records*, 1632-1691, especially 27-43, 75-78.

Maine, and, besides appointing special committees from time to time, stringent regulations were passed; even prosecutions were repeatedly commenced against the offenders but the wood kept on disappearing.<sup>83</sup> The problem of trespass was even more serious at Wenham, Mass., and the result of proprietary actions was just as discouraging.<sup>84</sup> At Salem the proprietors took drastic measures in prosecuting silent invaders for wood, timber, stones, etc., and imposed penalties as ordered by the Act of 1698.<sup>85</sup> At Worcester not only timber and stones were protected but also the feeding of cattle or horses belonging to non-proprietors was prohibited in the common lands under penalty of three shillings for each animal.<sup>86</sup> In Connecticut towns the difficulty was just as great and the proprietors undertook similar measures.<sup>87</sup>

The proprietary efforts to check trespasses and encroachments are universal and examples might be given indefinitely.<sup>88</sup> The above few examples, however, will suffice to bring out the nature of this type of trouble. The encroach-

<sup>83</sup> *Narragansett No. 1 Proprietors' Records*, 101, 104, 138-139, 145, 146-147, 149, 153, 180, 182, 190, 259, etc. See also 120, 148, 266, 270, 271, 274, etc.

<sup>84</sup> Allen, *History of Wenham*, 49-50.

<sup>85</sup> *Salem Commoners' Records*, *Essex Institute Historical Collections*, XXXVII: 107-108, 122-123, 142-145.

<sup>86</sup> *Early Records of the Town of Worcester, 1722-1753* (hereafter cited as *Worcester Town Records*), Bk. I: 35, 38, 51, etc. The penalty was later raised to 5 shillings. *Ibid.*, 89, 90.

<sup>87</sup> Saybrook Proprietors' Records, *Mss.*, 137, 138; Chester Proprietors' Records, *Mss.*, 53, 39; Union Proprietors' Records, *Mss.*, 108; Connecticut Archives, *Industry*, *Mss.*, I: 12, 13, 19.

<sup>88</sup> Upper Housatonnock Proprietors' Records, *Mss.*, 38, 44; Lower Housatonnock Proprietors' Records, *Mss.*, I: 347, 348; *Records of the Proprietors of Lunenburg, Massachusetts, 1729-1833* (hereafter cited as *Lunenburg Proprietors' Records*), 195 *et passim*; *Braintree Town Records*, almost on every page, especially 85, 90, 120-121, 128, 136 etc.



ments and trespasses in almost all cases were typified by silent invasions of the proprietary right and privilege; there were no arguments advanced and no open controversies resulted as in the other types, and even stringent laws were powerless in terminating the infringements upon the proprietors' rights. In this respect these silent invaders differed from the other kind of invaders to which reference was made on a previous page.

## 6. THE PROPRIETORS' PROTESTS

The complaints with respect to the common and undivided lands were by no means confined to the non-proprietors alone. There were also numerous controversies, disputes, and confusions among the proprietors themselves.

More commonly the controversies were due to the inequality of shares held and the consequent inequality or unfairness in the division of common lands. In Groton, Mass., the inequality of proprietary rights was remarkable, differing from five to fifty acres rights. A certain Prescott in the same town possessed, by process of descent and purchase, nearly 300 acres rights, or more than one-third of all the common lands.<sup>89</sup> This difference in shares held became much more marked during the eighteenth century when the speculative spirit crept into the proprietary transactions. And when we remember that the voting was made on the basis of acre rights or shares held, we can easily see the situation at the time of any division. Besides, it would be almost impossible to do justice to all when a small right descended to a large number of heirs and assigns, in which case the fractions were often so small that they were not worth the trouble of looking after them. The true owners of these small rights, especially after a lapse of time, would be difficult to trace out. Thus, due

<sup>89</sup> Butler, *History of the Town of Groton*, 26-27, 32.

mainly to such inequalities and to the vagueness of proprietary rights, there arose many controversies among the proprietors themselves, as, for example, at Groton. When the owners of certain rights did not receive their proportional legal rights in the division of the common and undivided lands they protested. There are, thus, numerous complaints of this kind recorded in their records.<sup>90</sup> Further examples of controversy on account of inequality may be found in Dedham,<sup>91</sup> Mass., and on account of vagueness in Charlestown,<sup>92</sup> Mass.

Closely connected with the inequality of proprietary rights, there was an interesting case in Framingham, Mass.<sup>93</sup> When Joseph Buckminster who was a proprietor and large land holder died, numerous claims were made to the land of the deceased, and, when a division of the common lands was made in pursuance of the proprietors' vote, many disputes and two law suits arose between divers of them. Even a special agreement which was made to settle the disputes seems to have failed and the matter was then referred to the General Court. The petition was drawn up by sixty-nine persons "who claim or have claimed property and interest in the common lands" and who were aggrieved on account of the said division. The petition stated the situation in the preamble as follows:

"... that for an amicable termination of all suits and disputes touching the premises, they have entered into *an agreement*, dated Framingham, Sept. 8, 1758,—which agreement has been also ratified

<sup>90</sup> *Ibid.*, 31–32.

<sup>91</sup> *Dedham Town Records*, III: 144–146, IV: 14–15; Mann, *Historical Annals of Dedham*, 14.

<sup>92</sup> *Charlestown Land Records*, 192, 195.

<sup>93</sup> For this interesting case see: Akagi, *op. cit.*, 70–72; *Mass. Acts and Resolves*, IV: 170–173; Massachusetts Archives, *Mss.*, CXVI: 675–678a, 681–682, 683–685, 686–687, 689, 690–691. Full details of petitions, reasons, and answers can be found in the latter.

by vote of the proprietors in a legal proprietors meeting; but in as much as some of the claims and disputes intended to be settled by said agreement are of such kind as that it doubtful whether the same can legally be settled and made binding according to the true intent of the parties by all that hath been done or can be done by any deeds of agreement, especially as some proprietors are minors, and such doubt and danger must greatly interrupt the quiet of the concerned, and hinder the improvement of the land (concerned), to the great damage of said town of Framingham; . . .”

Therefore the petitioners

“ . . . prayed the above referred mutual agreement be ratified and established so as to operate according to the true intent thereof, and it being evident that if said agreement was rendered effective and carried into execution, it would prevent many lawsuits and promote the general good of the interested in said common lands.”

The Court acted in favor of the petitioners and the agreement referred to was established and ratified. Then the Court proceeded to order, among other things, that an exact survey be taken of all the lands which were held by the deceased Buckminster; that all persons holding any of said land, under any grants made by said Buckminster, “be quieted in the possession of so much thereof, & no more, than the number of acres expressly mentioned in their original grants”; that if it is found that Buckminster had no right on any part thereof, the proprietors are allowed to “demand and recover” such land or the value of it; and that if any person is found to hold more than what is expressly mentioned in Buckminster’s original grant, he should “set the same off in a regular form in one entire piece and resign the same to the proprietors or pay them the value thereof.” It then confirmed the division of lands made by the proprietors.

Another phase of unfair division is brought out in a petition of the proprietors of Berwick, Mass.<sup>94</sup> The whole situation is thus summed up:



“ . . . that when they were set off from the Town of Kittery & made a distinct Township, It was ordered that the common lands should be divided between them in proportion to their Estates, by that a Meeting was appointed in the year 1711, for the Valuation of their Estates by which such Division should be made, but it being the time of War & great Danger, the People of that part now called Berwick could not attend said Meeting without exposing themselves & their families, which the other took advantage of & very much underrated them, by which means the Petitioners have not their proper share of the said common lands . . . ”

The petitioners then prayed that a committee of the Court be appointed to inquire into their grievances and such committee was actually appointed but no further action is recorded.

In making any division there was also another profound difficulty in effecting equality in quality as well as in quantity. This difficulty caused much friction as to the division lines. Thus the survey of divisions became an important part of any division and often controversies ensued merely from the vagueness of the lines separating the possessions of two or more proprietors. A typical case is that of Tisbury, Mass., where the controversy between two proprietors as to the lines separating their respective shares in a division caused a division of the proprietors into two parties.<sup>95</sup> A similar case at Worcester was finally referred for division to a committee of the General Court.<sup>96</sup> Similar cases may be found in the other colonies.<sup>97</sup>

There was one more phase in this type of controversies,—the boundary disputes between two or more proprietors. The cause was generally in the unscientific method of locat-

<sup>94</sup> *Mass. Acts and Resolves*, XI: 589.

<sup>95</sup> *Records of the Town of Tisbury, Massachusetts 1669-1864*, 143, 153, 161.

<sup>96</sup> *Worcester Proprietors' Records*, 48-50.

<sup>97</sup> For example, *Conn. Col. Rec.*, VI: 149-150.

ing the grants, resulting often in overlapping territories.<sup>98</sup> The Bow controversy, which is treated in detail elsewhere, is a typical example of this type. A new town often grew out of an original town and this process sometimes caused much trouble among the proprietors of the two towns thus separated. At Haverhill, Mass., for example, when Methuen was set off as a distinct township, there was a dispute among the proprietors of the two towns and the matter was only settled by the General Court. The Court resolved:<sup>99</sup>

“That the proprietors of any common and undivided lands in said township of Haverhill and Methuen are to hold and enjoy their respective rights and proprieties in such land, as if the said township of Methuen had never been granted.”

#### GENERAL SOURCES AND REASONS OF CONTROVERSIES

If we now summarize the whole series of controversies, we find that the fundamental source of proprietary controversies, no matter what type they may have assumed, was in the land system of the New England colonies. Focusing the interests upon the common and undivided lands, the line of cleavage ran economically and socially through the town's life—the possession and distribution of land on the one hand and the existence of a privileged class on the other, though the one was the reciprocal of the other.

Economically, the grant of land to a certain group of persons with an exclusive right to the later divisions was undoubtedly a sound policy in those early colonial days, especially when we take into consideration the English institution as a general background upon which the pictures of colonial life were projected. On the other hand, the

<sup>98</sup> For actual controversies see: Massachusetts Archives, *Mss.*, CXIII, CXIV, and CXV, *passim*; Connecticut Archives, Towns and Lands, *Mss.*, IV, *passim*; *Conn. Col. Rec.*, VIII: 411–412, 362, 383.

<sup>99</sup> *Mass. Acts and Resolves*, XI: 398.

system resulted in setting aside a large portion of the town land, not only in the hand of a small number of men, but undivided and unutilized. In the eyes of those who did not possess the shares in the division of the common lands it was simply a monopoly of the town's economic resources. While the members of the board of proprietors alone had profited from their shares in the division of land from time to time, the rest of the inhabitants were left entirely empty-handed, and the system was bound to produce conflict and unrest instead of peace. There was an inequality in the distribution of town's wealth from the very beginning of the town life.

Socially, the proprietors formed a distinct privileged class, the shareholders in the division of the common and undivided lands. The personnel of any board of proprietors<sup>100</sup> will convince us that they were, more or less, wealthier than the rest of the inhabitants; that they represented the higher level of the social structure of the time; and that they constituted a landed, conservative, gentry class. That they, thus constituting a higher class in the society, had the church behind them is not questioned. Moreover, their position, as well as their privilege, was based upon "blood," so to say, and was perpetuated by a system of inheritance. "Undeniably there was aristocratic aversion on the part of our thrifty Puritan fathers," wrote Herbert B. Adams,<sup>101</sup> "against granting land to new comers, unless they were men of some property . . . for the communal

<sup>100</sup> See for example the proprietors of Leicester, Mass. Of the twenty-two proprietors following are the remarkable names: Jeremiah Dummer, Paul Dudley (Attorney General, a son of the Governor), William Dudley (another son of the Governor), Thomas Hutchinson (father of the later Governor), John Clark (a political leader), and Samuel Sewell (son of the Chief Justice). Turner, *op. cit.*, 266.

<sup>101</sup> Adams, *Village Communities of Cape Anne and Salem*, 67.



spirit, intensified by the Puritan idea, not only forbade dispersion and squatter sovereignty, but wisely kept the control of the commune in the hands of good, substantial citizens, who were able to pay taxes and help support preaching." In short, the proprietors constituted a privileged class through claims of blood, wealth, and influence, backed by the pronounced support of the church.

Thus the bulk of freemen, instinctively inclined to democracy, found it difficult to tolerate the existence of such a lordly gentry class within their town limits.

These two sources of conflicts, however, were not felt keenly at first; in general they were fanned to sparkle up into a brighter flame of controversy by the increase of population. In other words, with the conflict-provoking land system on the background, the immediate cause of the trouble may be said to have been the increase in the number of townsmen which in turn caused increased demands for land, the heterogeneity of the people,<sup>102</sup> the existence of class consciousness, and the complications in the town politics. This we have found to be true in nearly every town where controversy existed.

That there was this inseparable relationship between the non-proprietors' cause and the distribution of population we can readily see if, for example, we compare the distribution of population with the distribution of controversies in Massachusetts. In general we find more controversies in the districts where the population was thickest. Thus, the principal seats of conflicts are to be found in the eastern parts of the Province and in the Connecticut Valley; and those parts constituted roughly the population belt of the time. Furthermore, the conflicts were bitterest in the eastern and north-eastern corner and that region was then

<sup>102</sup> Especially the racial elements. For example, see the English and the Scotch elements in their relation to the controversy at Palmer, Mass. Temple, *History of Palmer*, 135.

the most thickly populated part of the Province. It is also an undeniable fact that the most violent controversies in the other sections just mentioned took place in the towns where the population was comparatively large, as at Worcester. In the case of absentee controversies, however, the scenes are laid in both the frontier and old towns, the absenteeism being more or less a frontier institution.

Having summarized the general sources of controversies, the general demands of non-proprietors become obvious. They were prompted by an urgent necessity for land, and their claims, no matter what type the controversies may have assumed, may be boiled down to either one, or both, of two propositions: first, an equal distribution of lands to all legal inhabitants of the town; and second, admission of inhabitants to the board of proprietors.

The reasons which were put forward in supporting such a stand, as we have seen, were diverse and differed slightly according to the different types of controversies. In general they involved the following principles: that land belonged to all who were legal inhabitants or voters of any town and should be used for the benefit of all; that the distribution of lands should be equal to all, or, in some cases, according to the amount of taxation—town's charges, minister's rates, etc.; that the equal standing among all inhabitants should follow the equal payment of taxation and equal service; that land is not merely for possession but also for occupation, settlement, and improvement and that no land should lie idle under any hand without utilization; and that the peace and welfare of the community should be maintained by the unification of the town life through a mutual cooperation of all concerned. Thus, the controversies, centering as they did upon the common and undivided lands, involved all the important channels of the town's activity—economic, social, political, and even religious.

Against these non-proprietors' contentions and the reasons therefor, the proprietors simply shielded themselves securely on legal ground. They maintained that lands were granted to them with exclusive right to improve, divide, and manage; that the full proprietary rights and privileges could only be obtained through direct inheritance, gift, or purchase; that the non-proprietors could only claim that amount of land which the proprietors specifically granted to them; and that such grant of land by the proprietors by no means included the interests or shares in the remaining common and undivided lands unless otherwise specified.

#### ATTEMPTED METHODS OF SETTLING CONTROVERSIES

Judging from the claims of the non-proprietors as described in the preceding pages, there were in general two distinct demands—at bottom one and they were reciprocal to each other—namely, admission to the board of proprietors and concession of shares in the division of lands. Thus, as Eggleston suggests,<sup>103</sup> there were two ways of satisfying their claims: the first was by increasing the number of proprietors and the other was by granting lands to the non-proprietors or new comers, even without any accompanying right to the commonage. Indeed, if one or the other of these principles had been generally conceded there would probably have been no controversies. On the contrary, it was the denial of these simple principles which caused most of the controversies and the attempted methods of obtaining these ends become an important problem to be treated by itself. I shall, however, merely summarize what have already been discussed with certain important additions.

Although the proprietors were markedly jealous of their right and guarded it so preciously as to cause feeling

<sup>103</sup> Eggleston, *op. cit.*, 41-42.



amounting to antagonism on the part of non-proprietors, they were in many cases conciliatory enough to make suitable concessions of their right. We have already seen that they granted land to the thirty-nine dissatisfied non-proprietors at Haverhill in 1724; that a settlement was finally made at Newbury when, after two similar concessions in the two previous occasions, the proprietors conceded to divide the 3000 acres of the 6000 acres among all inhabitants of their town who have paid rates for the two previous years; that, at Salem, all the cottagers were allowed the proprietary right through two great concessions of 1702 and 1714; and that the proprietors of Providence, R. I., admitted both the "New Comers" and the "Quarter Rights Men." At Duxbury, Mass., following a mooted controversy, all freeholders were allowed an equal share of the common lands after certain parts were reserved for the proprietors; even young men above twenty-one years were given a half share in the first and a whole share in the last divisions.<sup>104</sup>

Where concession could not easily be obtained, compromise or mutual agreement was not uncommon. Such was the case at Northampton, Mass., when, in 1700, the town gained the control of a certain tract of the common lands for ten years and relinquished all right and liberty to cut timber, and, in 1754, certain four square miles of common lands were reserved for the inhabitants and the town quitclaimed all rights to the common lands. At Chatham, Mass., the proprietors and old comers claimed right to the common lands by "purchase, labor, and suffering," while the non-proprietors and new comers insisted that "the land ought to be held by the colony as a whole." A compromise was reached in 1640 by which the proprietors or

<sup>104</sup> *Old Records of the Town of Duxbury, Massachusetts, 1642-1770*, 208-209.

“the purchasers” were to select two or three “plantations” for their own use and benefit, while the remaining lands included in the patent were to be surrendered to the Colony and thereafter to be disposed of by the General Court.<sup>105</sup> The management of the common lands at Wenham, Mass., was a continued subject of difficulty and gives an example of mutual agreement as a means of settlement. There the division among the proprietors was early suggested but various obstacles stood in their way; it was even questioned by the non-proprietors whether the division could legally be made without a unanimous consent of all. All parties finally reached a mutual agreement for a division on the ground “that the land in this state was very imperfectly cultivated and that their value could never be half realized.”<sup>106</sup>

The concessions and compromises were not, however, always fortunately reached and arbitration was the more general method of settling the conflicts. This was usually done by committees from the contending parties, as at Haverhill, or by a committee of townsmen, as at Lancaster.<sup>107</sup> It has been noted already that, at Northampton, the proprietors sought the opinion of the leading lawyers of Connecticut; and when the proprietary right was questioned at Ruxbury, the selectmen were directed to consult legal authority for a decision.<sup>108</sup> The settlement by referees from other towns was not infrequent also, as at Lynn and Malden.<sup>109</sup> At Attleborough, Mass., the town itself acted

<sup>105</sup> Smith, *History of Chatham*, 46.

<sup>106</sup> Allen, *History of Wenham*, 49-50.

<sup>107</sup> *Annals of Lancaster*, 43-45. For Haverhill, see above 126ff.

<sup>108</sup> Ellis, *History of Roxbury*, 60, 72. For Northampton, see above 142.

<sup>109</sup> Lewis and Newall, *History of Lynn*, 306; Corey, *History of Malden*, 369. Eggleston gives similar suggestion (p. 4) but his references are erroneous and can not be found.

as an arbitrator and helped to bring about a peaceful settlement of the land question in that town.<sup>110</sup> The Connecticut General Assembly ordered, in 1719, three freeholders, "being persons disinterested," to decide a proprietary controversy.<sup>111</sup>

When all these means were impracticable or when quicker action was necessary, an appeal to the General Court was the most common and was often used as a final resort. It is needless to say that the colonists were well acquainted with this form of getting the remedy or settling the difficulties, especially when we remember the practice of appeal to the home government and the system of disallowances. Thus, numerous petitions addressed to the General Courts are found throughout these years of controversy. In some cases the Court acted favorably toward the non-proprietors, but in general its attitude was favorable to the proprietors. This tendency seems to be natural when we think of the nature of the Court or Assembly. Although it represented the people through towns, nevertheless, it was a dignified body with decidedly a conservative inclination; the men who constituted it were mostly wealthy and large property holders, themselves proprietors in a majority of cases, and represented the more or less higher level of the society of the time. They were the introducers, or the successors of the introducers, of the institution of proprietorship, moreover, and were inclined to be very conservative with respect to that practice. In some cases the Court acted immediately, but, more usually, it appointed a committee to investigate and report thereon. In many other cases it directly referred the case back to the proprietors—this in itself will show, to a certain extent, how the Court was favorably disposed toward the

<sup>110</sup> Dagget, *History of Attleborough*, 18-19, 62-63.

<sup>111</sup> *Conn. Col. Rec.*, VI: 149-150.



proprietors—or to the selectmen of the towns in which controversy took place; while it was not altogether unusual for the Court to dismiss the case without redress or any action thereon.<sup>112</sup> The results of these decisions were published in the form of orders or resolves. No matter what was the actual result, this means of an appeal was extensively used as the foregoing pages show.

It may be added also that the town sometimes settled the disputes by its own legislation. Lancaster, for example, barred the absentee proprietors from any right and privilege in the town in 1657 in order to terminate the complaints against them.<sup>113</sup>

The lawsuit was another method which was extensively and effectively used in more contentious cases. Suits of ejectment were very common cases in the eighteenth century and the files of the court of common pleas and of the superior court of the time throughout the New England colonies are full of these land cases.<sup>114</sup> Lawsuits were also used in the actions against trespasses and encroachments.

Even if all these methods were available and found effective in settling controversies, we also find that hostility in many cases gradually died away, spelling a large failure over the non-proprietors' claims. Such failures on the part of the non-proprietors were not necessarily always due to the unyielding character of the proprietors; the legal basis and position of the board of proprietors were securely established to withstand even a strong attack of the non-proprie-

<sup>112</sup> For these different methods of procedure, see for example the actions of the Massachusetts General Court as shown in the following: *Mass. Acts and Resolves*, VIII: 122, 148, 179, 199, 201; IX: 9, 66, 85–86, 565; XI: 636, 642; XIV: 292–293; *Mass. Col. Rec.*, IV, Pt. 2: 354–355.

<sup>113</sup> See above 140.

<sup>114</sup> A few of the typical legal cases are given below in a separate section, particularly in connection with the eastern claims.

tors. The proprietors had the Province and Colonial laws as their shield and even the sharpest of weapons of the offensive enemy dropped ineffective; they usually emerged unhurt and victorious on this account. Thus one of Haverhill's historians, after describing the strong but unsuccessful attempts of the non-proprietors in that town, wrote:<sup>115</sup>

“The most reasonable solution we can give of the problem is this that the right of proprietors to the land claimed by them was too manifest and too well supported by reason and authority to afford any inducement to the non-proprietors to continue the contest.”

Yet, on the contrary, we can not close this resumé without reference to the good will of the proprietors, a part of which we have noted in their conciliatory attitude and concessions. Although they formed a landed class and represented a sort of feudatory landlordism, and although some of them were stamped as abstentees, hostile to the town's economic development, nevertheless, they contributed much toward the settlement and improvement of the town. In this respect we have seen numerous cases of proprietors' liberal contributions to the founding of towns.<sup>116</sup> Thus at Ipswich, the proprietors voted over 3000 acres for the use of the town and later made a gift of lump sums for building a workhouse, school, suitable land marks, etc.<sup>117</sup> At Sutton, Mass., the proprietors granted 132 acres to the minister in place of 100 acres which the inhabitants promised to him, thus taking the whole burden off the shoulders of the inhabitants.<sup>118</sup> They were equally liberal in granting land to the non-proprietors in some towns.

<sup>115</sup> Chase, *History of Haverhill*, 273.

<sup>116</sup> See above Chapter IV, “The Activities of the Town Proprietors.”

<sup>117</sup> *Ancient Records of the Town of Ipswich*, 27; Waters, *Ipswich in the Massachusetts Bay Colony*, 71, 74.

<sup>118</sup> Benedict and Tracy, *History of Sutton*, 38.

Thus, at Cambridge, a large tract was "granted in a way of free gift . . . unto other inhabitants of the town, that have no interest with respect to their quality, desert, or standing in the town and bearing public charges."<sup>119</sup> The first settlers and new comers at Eatham, Mass., were included gratuitously in a general division of lands in 1652.<sup>120</sup> When forty-eight non-proprietors asked for land at Rutland, Mass., in 1720, four acres each were gratefully granted to them without a second word and, in addition, five acres of clear meadow were granted to each settler.<sup>121</sup> Even though the proprietors constituted a sort of "landed gentry" and virtually controlled the town affairs, the good will of the proprietors at Manchester, Mass., was so well recognized that its historian wrote:<sup>122</sup>

"There is no evidence, however, that they abused their privileges, settling themselves up as feudatory lords and treating the rest of the inhabitants as vassals, but rather that they used their power in a wise and liberal manner, coming to the relief of the town from time to time in assisting to bear the burdens of taxation."

Thus it is that in many towns we see no evidence of controversy between the proprietors and the rest of the inhabitants or the town. Their good will more than guaranteed peace.

### III. THE BOW CONTROVERSY

Of the numerous legal controversies which arose as a result of colonial boundary disputes in the eighteenth century, the Bow controversy is a most notable one. It involved two proprietries, one created by the Massachusetts

<sup>119</sup> *Cambridge Town Records*, I: 155.

<sup>120</sup> Freeman, *History of Cape Cod*, II: 358.

<sup>121</sup> Reed, *History of Rutland*, 18-20.

<sup>122</sup> Lamson, *History of Manchester*, 20.



General Court and the other by the New Hampshire Government; it raised the question of private property after the settlement of the boundary disputes between those two governments; it clearly showed the ambiguous nature of the township boundaries as they were granted and surveyed during the eighteenth century; and it also pointed toward the method of settling the legal disputes of the time, being finally appealed to the King in Council. Incidentally, the Bow controversy typifies the kind of legal controversies which were common in the eighteenth century, though many were smaller and less significant.

The Bow controversy has its origin in the two township grants made by Massachusetts and New Hampshire governments over practically the same territory. In 1726 the Massachusetts General Court granted the township of Penny Cook, or Penacook, on the Merrimack River, now Concord, N. H., to one hundred and two proprietors.<sup>123</sup> The proprietors had taken immediate measures to fulfill in good faith the conditions of grant and the township was incorporated as Rumford by Massachusetts in 1733-4, there being about eighty families. In 1727, on the other hand, the same territory with some additional land was granted by the New Hampshire authority to one hundred and twenty-three persons, designated as proprietors of Bow. Among these grantees were Benning Wentworth, afterwards governor, Hunking Wentworth, William Wentworth, Mark Wentworth, George Jaffrey, Jr., Richard Waldron, Jr., and Richard Wibrid, Jr. To this body was added "Admitted Associates" of twenty-nine members, including such men as Samuel Shute, Thomas Westbrook, Theodore Atkinson, John Wentworth, and others, embracing sub-

<sup>123</sup> The territory known as "Penacook" was originally granted by Massachusetts in 1659. It was regranted by Massachusetts on Jan. 17, 1725/6, which grant is the one now in question. It was incorporated as Rumford on Feb. 27, 1733/4.

stantially all the members of the executive and legislative branches of the provincial government. While the Massachusetts proprietors were settling the town and the township was being incorporated as Rumford, the Bow proprietors did nothing worthy of mention to improve any part of their grant. It may be noted here that, at the time these two grants of practically the same territory were made to these two proprietries, the common boundary line between northern Massachusetts and southern New Hampshire was not determined and that both provinces claimed ownership of the territory covered by these two respective grants.

The situation stood unchanged and unnoticed for ten years when four events<sup>124</sup> precipitated the controversy. The first was the settlement of the boundary disputes between Massachusetts and New Hampshire, by which, upon running the boundary line in 1741, Concord was officially transferred to the latter's jurisdiction. The second event was the accession of Benning Wentworth to the chief magistracy of the separate province of New Hampshire on Dec. 30, 1741. It will be remembered that he was one of the grantees of Bow and many of his associates in the government were relatives as well as members of the Bow grantees. The third event was the enactment of the District Act, March 18, 1741-2, which denied the validity of the Penny Cook grant and of the Rumford town charter granted by Massachusetts and approved by the King in 1738. It also gave power of taxation to non-incorporated towns in the territory which was decided in favor of New Hampshire

<sup>124</sup> Walker, *The Controversy between the Proprietors of Bow and the Proprietors of Pennycook, 1727-1789*, New Hampshire Historical Society, *Proceedings*, III: (hereafter cited as Walker, *Bow Controversy*), 266-269. This is the best secondary account on the subject, with ample citations, and I have followed it closely. For maps, see *New Hampshire State Papers*, XXIV: 622-623, 624-615.



within a limited period.<sup>125</sup> The last but the most important event was the revival of the claims of the Bow proprietors.

That the proprietors of Bow, as a legal propriety, had no legal right at this time was clear from their non-compliance with the conditions of grant, which, *ipso facto* resulted in the forfeiture of the charter.<sup>126</sup> But the revival was largely influenced by the speculative spirit of the time. Moreover, most of the active members of the revived Bow propriety were the most influential men in the new government, headed by Benning Wentworth and followed by his relatives or by those who were in sympathy with the cause of the Bow proprietors.<sup>127</sup> The plan adopted by the Bow proprietors was twofold. On the one hand they prevented the renewal of the district act, which expired in 1748 and left the Rumford inhabitants without civil government and incorporated powers. On the other hand they planned to obtain possession of the disputed lands by instituting suits of ejectment of a less value than three hundred pounds, the least amount for which an appeal could be taken to the court in England. Their policy was to confine their suits to the provincial courts, in which they felt confident of favorable verdicts, and thus force the Rumford proprietors to purchase a second time or abandon their possessions.<sup>128</sup> However, the execution of this scheme was prevented by King George's War and it was not till 1749

<sup>125</sup> It expired a fourth time in 1749 and then till 1766 the township was deprived of its corporate powers.

<sup>126</sup> The fulfillment of the conditions of grant was required as in other grants of the century. Delinquency was stated to be treated with forfeiture.

<sup>127</sup> Walker, *Bow Controversy*, 269ff. He has also taken into consideration some religious motives in the action of Wentworth.

<sup>128</sup> Walker, *Bow Controversy*, 270-271. At this time the provincial law allowed no appeal to the Governor and Council unless the matter in controversy exceeded in value £100, nor to the King in Council unless it exceeded £300.



that the first suit of ejectment was entered by the Bow proprietors against John Merrill, one of the Rumford proprietors, for eight acres of land.

The action of the proprietors of Bow against John Merrill was entered at the December term, 1749, of the common pleas and was continued to the one succeeding, the March term of 1749-50. On March 7, 1750, judgment was rendered for the defendant and the plaintiffs took an appeal to the next superior court, where the pleas of abatement were waived, and, by agreement of the parties, the case was continued to the following term when the case was dismissed, neither party appearing. The action was continued at the defendant's request to the March term of 1751 when judgment was rendered for the defendant and the plaintiffs again appealed to the next superior court. There, by repeated continuance, the case was carried to the December term of 1752 when it was tried and the judgment was rendered "That the former judgment be reversed, and that the plaintiffs recover against the defendant the premises sued for and costs of court."<sup>129</sup>

In the meanwhile the Rumford proprietors were not inactive. On April 23, 1750, they met and voted

"That the Proprietors aforesaid will be at the cost of Defending John Merrill, one of said Proprietors, in the Action brought against the said John by the Proprietors of Bow for the Recovery of Part of said John's Homestead, provided said John Merrill shall Pursue and Defend said Action Agreeable to the orders of said Proprietors.

"That the said Proprietors will be at the Cost and Charge of Supporting the just Right and Claim of any of said Proprietors or their grantees to any and every Part of said Township of Rumford against Any Person or Persons that Shall Trespass upon any of said Lands or that Shall bring a writ of Trespass and Ejectment for the Recovery of any of said Lands. Provided that the said Proprietors

<sup>129</sup> *New Hampshire State Papers*, X: 392-396; Walker, *Bow Controversy*, 272, 275-276, quoting the records of the court of common pleas and the superior court at length.

or Grantees that Shall be Trespassed upon or that Shall be sued Shall Pursue and Defend their Right or Claims agreeable to the Orders of said Proprietors of Rumford.’’

They appointed two committees, one to advise John Merrill in his defense or any other person who shall be sued or shall sue in order to defend their just right, and the other to sell any necessary amount of land to defray the expenses of the proposed action.<sup>130</sup> A year later the Proprietors extended the above votes so as to include the defense of Ebenezer Virgin in an action brought against him by another proprietor of Bow.<sup>131</sup> It is evident that the case was not the case of Merrill but that of the Rumford proprietors.

John Merrill was not, having the Rumford proprietors behind him in full force, dismayed at the decision of the superior court in 1752. At the next term of the superior court, Merrill brought an action of review against the proprietors of Bow. Again the jury found for the defendants and a judgment was rendered, on June 4, 1753, that “The former judgment be and is hereby affirmed, and that the said proprietors recover against the said John Merrill costs of court.” Thereupon Merrill moved for an appeal from this judgment to His Majesty in Council, which motion was rejected. Then he also moved for an appeal to the Governor and Council as a court of appeals, which motion was also rejected.<sup>132</sup> In the meanwhile various others of a like character were prosecuted by, or in the

<sup>130</sup> Walker, *Bow Controversy*, 275–276, quoting the records of the court of common pleas.

<sup>131</sup> *Ibid.*, 276.

<sup>132</sup> *Ibid.*, 276, quoting the records of the superior court. *New Hampshire State Papers*, XXIV: 628 has a brief summary of the same as it was later used in the argument before the King in Council.

interest of, the Bow proprietors against Merrill's neighbors and, almost uniformly, to their discomfiture.<sup>133</sup>

The proprietors of Rumford were still undaunted and they all agreed to appeal to the King in Council. Even the Massachusetts General Court backed the move with a gift of one hundred pounds in furtherance of their purpose.<sup>134</sup> In February, 1753, they appointed Benjamin Rolfe and Timothy Walker, the latter their minister, to draft, sign, and present in their behalf a petition to His Majesty in Council, setting forth their grievances and praying relief therefrom. Four days later William Bollan was appointed agent in their interest. The petition was drawn up accordingly and Walker left for London in the autumn of 1753.<sup>135</sup> The Council and Assembly of New Hampshire, in view of Walker's sailing and the aid given by the Massachusetts Bay Province, voted to notify John Tomlinson, their agent at London, "to be upon his watch as to anything of that sort that may happen" and to inform the New Hampshire government if anything shall arise which may affect its interest.<sup>136</sup> Through Lord Mansfield's aid, Walker, despite the schemes of the Bow proprietors to prevent the appeal, secured a hearing before the lords of the committee, the date set being in October, 1754. The case was delayed but

<sup>133</sup> *New Hampshire State Papers*, X: 392-396; Walker, *Bow Controversy*, 276. For depositions bearing upon the cases of Merrill and other, see *New Hampshire State Papers*, XXIV: 615 ff.

<sup>134</sup> 1753. *Mass. Acts and Resolves*, XV: 45. The next year, the Massachusetts General Court again voted £150 for the same cause. *Ibid.*, XV: 250.

<sup>135</sup> *New Hampshire State Papers*, XXIV: 614-615. Walker, *Bow Controversy*, 278-281, gives the full text of the petitions from the original.

<sup>136</sup> *New Hampshire State Papers*, I: 253; Walker, *Bow Controversy*, 282.



on June 24, 1755, it was ordered by the King in Council<sup>137</sup>

“That a judgment of the Superior Court aforesaid, recovered by the Proprietors of Bow against the said John, on the first tuesday of Augt 1753, should be reversed, and that the appellt be restored to what he may have lost by means of the said judgment, whereof the Governor and Commander in Chief of his Majesty’s Province of New Hampshire, for the time being, and all others whom it may concern, are to take notice and govern themselves accordingly.”

This decision did not dismay the proprietors of Bow. As soon as the Indian war was practically over, they started on their legal war path again and, at the December term of the common pleas, they entered a new action against Benjamin Rolfe, Daniel Carter, Timothy Simonds, John Evans, John Chandler, Abraham Colby, and Abraham Kimball for the recovery of one thousand acres in their possession.<sup>138</sup> After one or more continuances, judgment was rendered for the plaintiffs and the defendants appealed to the next superior court, where it was tried and the judgment of the inferior court was affirmed. Thereupon the defendants moved for an appeal to His Majesty in Council which was allowed.<sup>139</sup>

All the preparations were again made vigorously and Timothy Walker was appointed to prosecute the appeal. The Massachusetts General Court, as in the last case, again voted £100 to aid the cause of the Rumford proprietors.<sup>140</sup> At London, Walker secured a new counsel in the person of William DeGrey, because Sir William Murray, his former

<sup>137</sup> Walker, *Bow Controversy*, 282–284. Lord Mansfield was then Sir William Murray.

<sup>138</sup> These are all influential members of the Rumford propriety.

<sup>139</sup> The case was tried in the inferior court on Sept. 2, 1760, and in the superior court, upon appeal, on the second Tuesday in

<sup>144</sup> See *New Hampshire State Papers*, XXIV: 642ff.

<sup>140</sup> *Mass. Acts and Resolves*, XVI: 639.

counsel, had been made chief justice of the King's Bench and Baron Mansfield.

The case came to a trial on Dec. 17, 1762 and the judgment was rendered in favor of the Rumford proprietors.<sup>141</sup> The report of the Lords of the Committee of Council was made at the Court of St. James on Dec. 29, and the King, after considering the same, ordered, with the advice of his Privy Council,<sup>142</sup>

“that the said judgment of the inferior court of common pleas of the province of New Hampshire, of the 2d of September, 1760, and also the judgment of the superior court of judicature, of the 2d Tuesday in November, affirming the same, to be both of them reversed, and that the appellants be restored to what they may have lost by means of the said judgments, whereof the Governor or commander in chief of his Majesty's province of New Hampshire, for the time being, and all others whom it may concern, are to take notice and govern themselves accordingly.”

To this decision the proprietors of Bow gave way and, upon appeal, the original Rumford was incorporated in 1764 as Concord by the New Hampshire government.

This did not end the controversy, however. The proprietors of Bow still clamored that something should be allowed them for the relinquishment of their alleged rights. At the same time the proprietors of the adjoining town of Canterbury claimed a small territory within the northeastern limits of Concord, while the Masonian Proprietors asserted that its northwestern lines embraced a small tract of land belonging to them. The Rumford proprietors came to the conclusion that no more legal controversy should disturb their existence and voted to settle the trouble with

<sup>141</sup> Timothy Walker to Benjamin Rolfe, London Dec. 23, 1762, in *New Hampshire State Papers*, XXIV: 646-647; Walker, *Bow Controversy*, 285-286.

<sup>142</sup> *New Hampshire State Papers*, XXIV: 641-646, gives the full text of the report and the King's decision.

justice. In July, 1771, they appointed a committee "to make a final settlement with the Proprietors of Bow, with the Proprietors of Mason's Patent, and with the Proprietors of Canterbury" and raised six pounds on each original right. In accordance with these votes, the claims of the Canterbury proprietors were settled in 1781 and those of the Bow proprietors in 1787. The Masonian claims were previously settled in December, 1770.<sup>143</sup>

It is important to note that the King's decision in Council was based primarily upon the validity of private property as it was directed in his order upon the settlement of the Massachusetts-New Hampshire boundary line. That order expressly stated "to take care that Private Property be not affected" by running the new boundary line. This was profitably used by Lord Mansfield in the report of the Lords of the Committee of Council.<sup>144</sup> The same ground was made in the previous case of John Merrill by his legal advisers.<sup>145</sup> Then also, the actual occupation of the territory by the proprietors of Rumford, after fulfilling the conditions of grant, as against the delinquency of the Bow proprietors, had much weight in the final decision.<sup>146</sup> In both cases the Bow proprietors fell through, for they tried to deprive the Rumford proprietors of their property right under the law and they were delinquent proprietors who had no more right upon the Bow territory by the wording of their own charter of grant. Judgment was given only after this controversy had extended over forty years.

<sup>143</sup> Walker, *Bow Controversy*, 288-289, quoting the proprietors' records.

<sup>144</sup> See *New Hampshire State Papers*, XXIV: 642ff.

<sup>145</sup> See the brief of Judge Pickerling on behalf of Merrill in *New Hampshire State Papers*, XXIV: 627-641.

<sup>146</sup> See the report of the Lords of the Committee of Council in *New Hampshire State Papers*, XXIV: 642ff.



## PART II

# LAND SPECULATION IN NEW ENGLAND IN THE EIGHTEENTH CENTURY

## CHAPTER VI

### THE BACKGROUND OF LAND SPECULATION IN NEW ENGLAND IN THE EIGHTEENTH CENTURY

The town proprietors of New England in the eighteenth century were decidedly speculative in their character. This was due partly to the conditions existing in the seaboard towns, partly to the atmosphere of the period both within and without, and partly to the change in the policy of land grants which was instituted by the several colonies. Different forces, political and economic, worked together to bring about the speculation in land, one of the characteristics of the eighteenth century.

The seventeenth century New England was confined chiefly to the sea coast and river valleys, in neighborly compact settlements. The growth of population in these older towns gradually raised the problem of additional room for expansion. Unoccupied lands, both far and near, became an important factor in the solution of that problem and many a farsighted adventurer, backed by the awakening pioneer spirit, began to seize the opportunity thereby created. The result was the shifting of the first New England frontier line farther west and north and the loosening up of the compact settlements into scattered communities.

The colonial governments helped to bring about such a change by adopting a more liberal policy of land grants.

With the economic, social, and industrial changes incident to a century of growth and development, the religious group gives way to the commercial element. There had come not only the accumulation of wealth but the necessity for investment.<sup>1</sup> During the seventeenth century the investments of the capitalists were kept comparatively little diversified, being confined to fishing, trading, and possibly lumbering, and the opportunities for the outlay of surplus capital were not numerous. The Parliamentary suppression of manufactures in the Colonies also induced the capitalists to seek a new channel for their investments. The time was not as yet ripe for a successful land speculation, but the unappropriated land of the colonies afforded one of the splendid opportunities for such an investment. Already toward the close of the seventeenth century and the opening of the eighteenth century a tendency for the amassment of land manifested itself. There began to appear land projectors who were interested solely in dealing with land and who ventured to build their fortune thereupon. The waste land of the previous century thus became a valuable asset, as well as one of the speculative arena, of the dawning century.

Upon these fundamental tendencies of the time other influences were brought to bear, directly or indirectly, which actually resulted in land speculation of one sort or another. Among these forces at work during the first sixty years of the eighteenth century the more important were the conditions in England, the currency and bank problems, the Indian wars, the colonial boundary disputes, and the lottery.

<sup>1</sup> Mathews, *Expansion of New England*, 81, 100-101, etc.

Bold speculation was one of the characteristics of the eighteenth century, in England and America. That restless business energy which manifested itself after the close of the Civil War in England continued to be one of the active forces in the nation during the succeeding generations. Intruding itself into the affairs of state it soon taught politicians that they must shape their policies by its needs, so that by the middle of the eighteenth century there had developed an alliance between "big business" and the governing class which fostered a political immorality that resembled in its salient characteristics the similar phenomenon which has shown itself so plainly in the United States.<sup>2</sup> In the American colonies the speculative enterprises of the mother country naturally had its profound influence, not only in the sale of merchandise but also in the disposal of unoccupied land. The pulse of these influences of course can not be felt at one place or one enterprise but it manifests itself over different points of contact. The currency and banking problem was one of the earliest of these influences which accelerated the spirit of speculation in the New England colonies.

The currency problem in New England was already an acute one by the close of the seventeenth century and the idea of using real estate as a basis for bills of credit clearly manifested itself. The very fact that the colonists needed a bank but had no money to furnish capital explains why they constantly turned to land, as a commodity of which they had a plenty, to supply the necessary capital. In Massachusetts these three elements, the bank and the currency and the land, became closely combined and in the latter part of the seventeenth century, influenced by the English discussions and current thoughts, there were evi-

<sup>2</sup> Alvord, *Mississippi Valley in British Politics*, I: 86.



dences of proposals for the formation of a land bank.<sup>3</sup> The project for a land bank reached its climax in 1714 and anti-climax in 1740. In the former case it failed and although a bank was actually established in the latter case it failed to give relief to the financial situation of the time.<sup>4</sup> A similar movement in Connecticut also failed.<sup>5</sup> Thus left without a bank the currency problem was in a bad condition. All efforts to check the depreciation by legal tender legislation and other forcing measures failed. New issues were made to replace the "Old Tenor," but the "New Tenor" bills only added new rates of depreciation. The depreciated bills of credit thus flooded the New England market.<sup>6</sup>

<sup>3</sup> The discussion for a land bank in England culminated in the incorporation by Parliament in 1696 of a "National Land Bank," which however failed. The influence of English pamphlet literature was early felt in the colonies and Hartlib's pamphlet in 1661 suggested "a credit founded exclusively upon mortgages of land." The idea of "a Fund of Land," of "necessity of having a Bank to inlarge the *Measure* of Dealings in this Land" were familiar by 1686 when the first land bank was suggested in Massachusetts, using land as a "security stock." See Davis, *Currency and Banking in Massachusetts*, II: 1-81.

<sup>4</sup> For the land bank of 1714, see *Ibid.*, II: 82-92; for that of 1740, *ibid.*, II: 130-167. The continued agitation for a land bank during 1720-1721 and 1732-1740 may be found there also. *Ibid.*, II: 93-101, 167ff.

<sup>5</sup> The movement in Connecticut culminated in 1732 in the formation of the New London Society United for Trade and Commerce, which actually issued bills of credit, but failed when the Assembly negatived the scheme. It only complicated the currency problem by increasing the depreciated bills of credit. See *ibid.*; II: 102-110; *Conn. Col. Rec.*, VII: 422.

<sup>6</sup> The best authority on this subject is Davis, *Currency and Banking in Massachusetts*. See chapters Vff., XVII, XVIII, and XIX, respectively for Massachusetts, New Hampshire, Rhode Island, and Connecticut.

The fundamental idea underlying the agitation for a land bank was a credit founded exclusively upon mortgages on land or other goods; it was "a Fund of Land." One of the advertisements for the proposed land bank of 1714, for example, read in part:<sup>7</sup>

" 'Tis not propounded to be a bank of money, but of credit to be given forth by bills; not on money advanced, as in other banks, but (on Lands or goods aforesaid) to supply such as can not get money (by reason of its scarcity) with such as may be had for money.' "

Later in the Connecticut scheme of 1732 and the Massachusetts proposal of 1740, "the stockholders turned out to be, not contributors of funds, but borrowers of notes."<sup>8</sup>

Such being the case the discussion over the currency and bank about 1714 aroused much interest in the unappropriated land of the colonies and undoubtedly paved the way toward the change in the land policy which was initiated during the following two decades. As early as 1716, for example, a pamphlet appeared which had a direct bearing upon the subject. "*Some Considerations upon the several sorts of Banks Propos'd as a Medium of Trade*" is a valuable exposition of the land policy of the period in view

<sup>7</sup> *Ibid.*, II: 82, foot note.

<sup>8</sup> *Ibid.*, II: 106.

<sup>9</sup> Davis, *Colonial Currency Reprints, 1682-1751*, I: 335-349. The plans suggested were: grant of a township of four to five miles square to a group of men, by paying to the country "a moderate price of Land"; each to own and cultivate about fifty to sixty acres of land; township so to be selected as to give ample opportunity for building necessary mills; succeeding new townships to be granted as soon as the first is "filled up with Inhabitants"; to help this process the men who had engrossed the land to return one-half to the country; to "lend £100 without interest, upon condition that in ten Years time they break up and keep subdued 50 acres of Land."



of the changing conditions and embodies the suggestions for the utilization of waste land as a means of economic relief. Among other things, it discussed the problem of population and land, showing how the high prices of land are driving the people from Massachusetts to other colonies; it pointed out the evil of the engrossment of land; and it proposed the settling of unoccupied lands by dividing them up into townships, granting them at cheap prices, and offering subsidy or inducements to the settlers.<sup>9</sup> In 1719 another pamphlet, "*The Present Melancholy Circumstances of the Province considered*," appeared, heralding very similar ideas. It linked together the high prices of land and the scarcity of products and even suggested the taxation of "Waste Lands within the Townships" as an impetus for improvement and production.<sup>10</sup> In the following year, John Coleman, a leader in the land bank agitation, wrote a pamphlet and advocated the same idea, urging the fortifications along the "exposed Settlements" as a first step in the utilization of unoccupied lands.<sup>11</sup> An answer to this pamphlet by E. Wigglesworth, on the other hand, pointed to the lack of laborers as a cause of waste lands and engrossment.<sup>12</sup> In the same year another pamphlet called attention to the relation between a land bank and unimproved land, arguing that the former "will raise the value of Improved Lands

<sup>10</sup> March, 6, 1719. Boston. *Ibid.*, I: 350-363. See particularly pp. 362-363.

<sup>11</sup> *Ibid.*, I: 407. "*The Disputed State of the Town of Boston, &c, considered*." Boston, 1720. *Ibid.*, 397-413.

<sup>12</sup> "*A Letter from One in the Country to his Friend in Boston. . .*" Boston, April 23, 1720. *Ibid.*, I: 415-444. See particularly p. 440. Another of his pamphlet, "*A Vindication of the Remarks of One in the Country upon the Distressed State of Boston. . .*", Boston, May 24, 1720, emphasizes the same view. *Ibid.*, II: 19-42, particularly 32.

<sup>13</sup> "*Some Proposals to Benefit the Province*." Boston, 1720, *Ibid.*, II: 97-107. See particularly 100-103.



to 20 or 30 *per cent.* which consideration will Encourage Farmers to Improve more Lands,"<sup>13</sup> while in 1721 still another pamphlet emphasized that the land bank "will encourage people to manure and cultivate dormant Lands."<sup>14</sup> The unoccupied lands certainly were creating a floating wealth in the mind of the people and the pamphlet literatures of the period contained a new land policy and land speculation in embryo form.

In Connecticut, also, during the second decade of the century, speculation in land was already becoming evident. The Connecticut Colony seized upon its unappropriated land as a source of income and instituted the sale of land at public auction. As early as 1712 the General Court contemplated to sell "all the land between Danbury on the North and Fairfield and Norwalk on the South at public auction" and to add the proceeds to "the public Treasury which is much exhausted."<sup>15</sup> In 1715, when the Massachusetts-Connecticut boundary dispute was settled and Connecticut was awarded 105,793 acres of land, the General Court appointed a committee to sell the said land at a public auction "to the highest bidder." The public auction was held at Hartford in April, 1716, and the whole tract was bid off for £683 by William Pitkins, one of the committee, in behalf of the several persons mostly residents

<sup>14</sup> "A Discourse, sewing, That the real first Cause of the Strait and Difficulties of this Province of the Massachusetts Bay, it its Extravagancy, & not Paper Money. . ." Boston, 1721. Ibid., II: 279-300.

<sup>15</sup> Connecticut Archives, Towns and Lands, Mss., I: 273. No further record is found. There is, however, an earlier case. In 1707 a tract, fifteen miles square, was sold at £110 to a company of eight, including three women, from Plymouth, Mass., and Woodstock, Conn. John Chandler, later a noted land jobber, was one of them from Woodstock. Whether this was done at a public auction is not recorded. *Conn. Col. Rec.*, V: 116.

of Massachusetts.<sup>16</sup> That the spirit of speculation ruled the auction is evident from what followed.<sup>17</sup> In 1720 another auction was authorized by the Colony and a tract of 16,000 acres was sold for £510 to a group of eight men representing six towns, including a famous land projector of the time, Roger Wolcott.<sup>18</sup> In the same year the town of Union was sold at auction "for the encouragement of Yale College" for £307 to a group of twelve proprietors, two of whom were residents of Boston, Massachusetts, showing that the spirit of speculation was already in the air.<sup>16</sup>

In the meanwhile the influence of the conditions in England was being felt in the Colonies. England during the latter part of the second decade of the eighteenth century was going through a period of speculative craze, which found its climax in the "South Sea Bubble" of 1720 and other less well known schemes of the day. In France also an equally famous "Mississippi Scheme" proved to be another disastrous speculative experiment of the time. And into that speculative arena was thrown the unappropriated land in America. It was just at this time that Captain

<sup>16</sup> *Conn. Col. Rec.*, V: 528-529. The Committee was composed of William Pitkins, Mathew Allen, Joseph Talcott, Roger Wolcott, and Capt. Aron Cook. They were carefully ordered "to be honorably regarded out of the money gained by the sales." £500 were also set aside to the trustees of the "Collegiate School." Of these men, Roger Wolcott was one of the famous land jobbers of the time.

<sup>17</sup> The conduct of the sale and the price obtained gave much dissatisfaction and Pitkins was required to make his justification before the Assembly in June. The Council, however, passed a vote for approving the procedure of the Committee in October and the whole affair was sealed. *Conn. Col. Rec.*, V: 529, foot note.

<sup>18</sup> Wilmington, Conn. *Ibid.*, VI: 194.

<sup>19</sup> July 1, 1720. Union Proprietors' Records, *Mss.*, 3, 5, 9. Lawson, *History of Union*, 36-39. Authorized to be sold in May, 1719 sold at auction in July, 1720; and patent granted for the same to the purchasing proprietors in October, 1720. *Conn. Col. Rec.*, VI: 130, 213.



Thomas Coram, a famous projector, promulgated a project for settling the Sagadahock Province in Maine and raising a quantity of hemp and flax. The proposal outlined that a large number of men be incorporated with a capital of £100,000 and with a charter of privilege suited for the enterprise; that the territory be granted by the Crown to the corporation in fee; that the whole direction be entrusted to a board of seventeen directors; and that Massachusetts, to renumerate that colony for a surrender of her jurisdiction, should have the credit of subscribing £20,000 and own a fifth part of the interest. The scheme was not without its advocates and many prominent persons were involved in it. Jeremiah Dumner, an English agent, apparently imbued with the speculative mania then raging in England, was an ardent supporter and later a leader. But the bubble was breaking, Parliament resolved adversely, and it "had not time for any great success."<sup>20</sup> The unoccupied land and speculation were thus linked together in New England.

The Indian troubles, moreover, played an important part, at least indirectly, in the land speculation of the eighteenth century. The natives were a constant menace to the colonists and, closely following the heels of the King William's

<sup>20</sup> *Mass. House Journal*, 1762, Appendix, ix; Williamson, *History of Maine*, II: 100; Hutchinson, *History of Massachusetts*, II: 221 and foot note. Such petition was actually made for a grant of land as specified, but the Solicitor General, when it was referred to him, replied adversely to the proposition. Another petition was framed to the King, praying a hearing before the Lords, which was granted, but the Lords, after a reference to the Board of Trade, ruled in a resolution that the Crown has no right over the territory petitioned. Dumner tells us that he chose seventeen managers, including Lord Barrington, Col. Bladen of the Board of Trade, Baillis, a Commissioner of Custom, Sir Julius Beck, merchants, etc. See his letter, dated September 17, 1720, in Hutchinson, *History of Massachusetts*, II: 221, foot note.



War, the New England Colonies had suffered from several Indian outbreaks, both large and small, and took part in imperial Indian wars. More important among these are the Queen Anne's War with its peace of Utrecht in 1713, the Massachusetts Indian troubles in 1722-25, the King George's War ending in the peace of Aix-la-Chapelle in 1748, and the French and Indian War terminating in the peace of Paris in 1763. There were also innumerable small Indian raids and outrages from time to time.

These Indian troubles had at least three important effects upon New England land policy. First of all, they made the problem of defense more acute. As early as 1712-14, at the conclusion of the first period of war, the question was raised in earnest in Massachusetts and a series of frontier townships was suggested as a means of defense. This new policy was later carried, as we shall see. It however resulted in speculation over the border land and other territories. Secondly, it revealed to the colonists through their actual experiences in the wars a vast tract of cheap and plentiful unoccupied lands on the frontiers. It attracted their pioneer spirit, as well as it fermented the speculative spirit. This was particularly true of the Maine lands and the "New Hampshire Grants," though the latter were partially influenced by the boundary disputes. Lastly, it enlarged the pension scheme, thereby rewarding by land grants the services rendered in the Indian wars. Even the services rendered during the last century were ardently sought out by thousands as a pretext for land grants. The Canada and Narragansett townships are typical examples of these, while New York and New Hampshire granted individual "military grants" in great number in the territory west of the Connecticut River.

The boundary controversies between several colonies were another source of numerous speculative land grants of the eighteenth century. The long controversy over the

Massachusetts-New Hampshire boundary line was finally settled by the decision of the King in the Council in 1740 and the boundary line was ran in 1741.<sup>21</sup> Long before that date, however, the leaders in Massachusetts were contemplating a reenforcement of their claim by actual occupation. As early as 1712 such steps were urged on the ground of Indian policy; by 1721 the boundary question was closely interwoven with the township schemes; and by 1727-28 actual grants began to be located in what is to-day New Hampshire and continued until the final settlement of the line. As we shall see elsewhere, the Masonian title also affected Massachusetts in this respect. The New Hampshire-New York boundary controversy was more prolific of speculative grants and paper proprietors. Both colonies claimed the territory west of the Connecticut River and the controversy extended over twenty years until 1764 when the Crown, in an order in Council, declared the Connecticut River to be the boundary line between the two colonies.<sup>22</sup> In claiming the territory again by right of occupation, New Hampshire launched the policy of granting townships west of the Connecticut River in 1749, while New York protested and, particularly after 1765 when the King's decision was promulgated in America, she too granted numerous townships and military grants in the same territory, thus making it a most confusing net work of conflicting claims. In either case the spirit of speculation was successfully manipulated.<sup>23</sup>

The last, but not the least in its importance, the enthusiasm with which lotteries were practiced all over the New

<sup>21</sup> For the history of this controversy, see Fry, *op. cit.*, 241ff.

<sup>22</sup> Hall, *History of Vermont*, Chapters V and VI, gives the history of this controversy with ample citations from the sources.

<sup>23</sup> The other boundary controversies had little effect upon the speculative land policy. The Connecticut claim in Pennsylvania will be treated elsewhere.



England colonies from the middle of the century should not be overlooked in connection with the speculative mania of the period. Here again the influence of the mother country is quite evident. The passion for lotteries was widespread in England in the seventeenth century and in 1709 the Parliament prohibited them as "public nuisance."<sup>24</sup> In the New England colonies, although the Puritan socio-religious system looked upon them as "cheats," lotteries of various forms found a wide and growing patronage. The Massachusetts Bay government stamped the custom as "against the common good, trade, welfare and peace of the province" and "An Act for the Suppressing of Lotteries" was passed in 1719.<sup>25</sup> This was renewed in 1733.<sup>26</sup> Similar laws were enacted in Connecticut and Rhode Island.<sup>27</sup>

The Proviso in the Massachusetts law of 1733, however, exempted the lottery "allowed by act of parliament or law of this province" and this attitude overshadowed a deliberate change in the policy of the government which was adopted by the middle of the century. By that time lottery became very popular everywhere and the Province Government itself began to resort to it as a means of raising public revenues. In 1745 the Massachusetts General Court authorized the first provincial lottery for raising £7,500 for the sinking of province debts.<sup>28</sup> From that date on, lot-

<sup>24</sup> Douglas, *Financial History of Massachusetts*, 96-98.

<sup>25</sup> Act of Nov. 7, 1719, supplemented on April 30, 1773. *Mass. Acts and Resolves*, II: 149-150. In urging the legislation the Governor, on Nov. 4, 1719, referred to "a very mischievous and scandalous Practice, lately crept into the Trade of this Town of Boston; I mean the selling of goods, merchandises, and even Houses and Lands by Lottery." *Mass. House Journal* (Ford Edition), II: 174.

<sup>26</sup> *Mass. Acts and Resolves*, II: 663-664.

<sup>27</sup> *R. I. Col. Rec.*, IV: 478. Act for suppressing of lotteries, 1733. Weeden, *op cit.*, II: 691-693.

<sup>28</sup> *Mass. Acts and Resolves*, II: 195-199.



teries of various sorts, both provincial and private, were legalized by the General Court.<sup>29</sup> The movement received favorable impetus also in the neighboring colonies. The Connecticut Colony began to legalize lotteries in the forties and the records of the Colony during the following two decades are full of them.<sup>30</sup> The first Colony lottery was authorized in Connecticut in 1757 to raise £8,000 for the public treasury.<sup>31</sup> In Rhode Island the condition was similar, if not worse, the first authorized Colony lottery appearing in 1756.<sup>32</sup> Not only in the statute books but also in the newspapers of the time, from Boston to New York, the lottery notices were displayed in plenty.

This change which was brought about in the whole policy of the colonial governments toward lotteries clearly reflects the atmosphere of the time. The scheme was based upon speculative principles and imaginary wealth, and it successfully played upon the gambling spirit of men. It was resorted to wherever a large sum was necessary, particularly in launching public works of varied descriptions, in order to avoid the difficulty of raising it directly.<sup>33</sup> The

<sup>29</sup> See *Mass. Acts and Resolves, passim* and index. More important lotteries of the time were: one for supplying the treasury with 26,700 milled dollars in 1751 (*Ibid.*, III: 539-544, 548-549); another for £30,000 to cover the expenses of a military expedition to Canada in 1758 (*Ibid.*, IV: 88-90, 142); and the land bank lottery of 1760 (*Ibid.*, IV: 247-263). See also Douglas, *Financial History of Massachusetts*, 98ff.

<sup>30</sup> *Conn. Col. Rec.*, X: 217, 295, 431; XI: 262, 336, 411, 530, 600.

<sup>31</sup> *Ibid.* X: 605-606; XI: 262, 336. This was not a success.

<sup>32</sup> It authorized to raise £10,000 "to carry on the building of Fort George." *R. I. Col. Rec.*, V: 505. Others followed. *Ibid.*, VI-VII will furnish many examples. See index.

<sup>33</sup> Lotteries were resorted to in completing roads and highways, constructing bridges, building churches and libraries and other public buildings, etc. A typical example: the Massachusetts General Court licensed lottery for the Boston Township No. 9 in April, 1759. The scheme was to raise \$1,134 for completing pavement

hime government tried to suppress them, but the Revolutionary War alone prevented them and, after the War, they reappeared with a redoubled pace and on a larger scale.<sup>34</sup>

Such were the forces at work and we need not stop long to reason why the land grants in the eighteenth century resulted in speculation as they did. The first extensive speculation came in Massachusetts in 1727 and lasted until 1738. Then Connecticut followed with her auction townships in 1737, New Hampshire started her speculative grants in 1748 and continued till the Revolutionary War period, while New York covered what is to-day Vermont with speculative township grants after 1765. To a more careful study of these several grants we shall now turn.

and streets. It issued 6,000 tickets at \$2.00 each, totaling \$12,000. Of these \$10,800, after deducting \$1,200, were offered as prizes to the buyers. *The Boston News Letter*, Jan. 24 and Feb. 7, 1760.

<sup>34</sup> See Douglas, *Financial History of Massachusetts*, 100-101, 105ff. Book II, Chapter III, deals with the lottery in Massachusetts.

## CHAPTER VII

### THE SPECULATIVE TOWN PROPRIETORS OF THE EIGHTEENTH CENTURY

The final steps in the conquest of the western frontiers of New England colonies involved "the combined and sometimes antagonistic forces of eastern men of property—the absentee proprietors—and the democratic pioneers." During the early seventeenth century there was no evidence of commercial policy in the New England land system. One Puritan township after another was created by free grant of land made in advance to approved settlers, and the "eastern men of property" were democratically the pioneers themselves. Yet the growth of the colonies brought about a gradual transition. As the economic interest of the township grant and the political influence of the leading men began to intertwine, the natural demarcation between the men of property and the men of toil became more evident. Already during the last quarter of the seventeenth century the "eastern men of property" began to control the fate of the unappropriated land and the slowly moving wheels of townships toward the west. But the absentee proprietors as yet had very little chance to exist. As the eighteenth century dawned and the problem of the frontiers called forth firmer solution, however, diverse economic and political motives became increasingly evident, particularly in connection with the frontier grants of townships. Also, the bold speculative feeling asserted its influence steadily

<sup>1</sup> Turner, *The Frontier in American History* (Chapter II, on "The First Official Frontier of the Massachusetts Bay"), 65.



and a complete change in the Puritan non-commercial land policy was effected. In its place rose the land policy in which both political and economic motives were closely interwoven and men's attitude toward land became manifestly commercial. In the new system the line between the "eastern men of property" and the fighting pioneers was definitely drawn, while speculators and capitalists walked hand in hand. The transition was slow but steady. In the Connecticut auction townships of 1738 and the Massachusetts auctions of 1762, "the transfer from the socio-religious to the economic conception was complete, and the frontier was deeply influenced by the change to 'land mongering.'"<sup>2</sup> The absentee proprietors thus became an important factor in the final conquest of New England frontiers in the eighteenth century. They were characteristically a frontier institution.

Such a transition in New England brought about two main tendencies which cut through the land policy diagonally, namely, the building of the frontier towns and the growing evil of absentee proprietors. The one was the necessary and wise utilization of surplus population and capital, while the other was the evil result of speculation and antagonism between two classes, the "eastern men of property" and the toiling pioneers of the frontier.

#### SPECULATIVE LAND GRANTS OF THE EIGHTEENTH CENTURY

*The Narragansett Townships.* These were the townships which were granted to the officers and soldiers, their heirs and assigns, who had fought in the Narragansett War of 1675, more familiarly known as the King Philip's War. They have their origin in the proclamation which was made to the soldiers on the eve of the war, in the name of

<sup>2</sup> *Ibid.*, 60-61.

<sup>3</sup> Bodge, *Soldiers in King Philip's War*, 406-446.

the Governor, promising them "a gratuity of land, beside their wages" in case of the successful accomplishment of the cause.<sup>3</sup> Several years after the successful conclusion of the war, in 1685, two petitions were filed in the General Court, praying for such a grant.<sup>4</sup> A township of eight miles square was granted accordingly but it was not located and the subject was buried in obscurity for forty years. In 1727, when the land hunger had already set in and "all sorts of pretexts" were being offered for land grants,<sup>5</sup> the promise was revived and a petition was made anew. The General Court took it up into favorable consideration this time and granted two townships in 1728 and five additional townships in 1734.<sup>6</sup> Of these only one was located in Massachusetts, while two were in Maine and the remainder in New Hampshire as follows: No. 1 (Buxton, Me.) ; No. 2 (Westminster, Mass.) ; No. 3 (Amherst, N. H.) ; No. 4 (Goffstown, N. H.) ; No. 5 (Bedford, N. H.) ; No. 6 (Templeton, N. H.) ; and No. 7 (Gorham, Me.). There were 120 proprietors in each township which consisted of six miles square.

<sup>4</sup> Massachusetts Archives, *Mss.*, CXII: 398; *Mass. Col. Rec.*, V: 487. The petitions were dated June 4 and Nov. 17, 1685, respectively. *Narragansett No. 1 Proprietors' Records*, 1-5, will give full detail.

<sup>5</sup> See *Mass. House Journal* of this period. Already petitions for land grants were coming in with diverse reasons, such as suffering in the war, public services, misfortunes from Indian attacks, etc.

<sup>6</sup> *Mass. Acts and Resolves*, XI: 325-326, 673-674. All the proceedings of the Courts are conveniently gathered in *New Hampshire State Papers*, XXIV ("Town Charters," Vol. I), Appendix, 793-820. All the names of the proprietors are also given in Bodge, *op. cit.*, 413-441. At first there were only 240 petitioners, but the claims increased gradually until there were 840 of them, showing the nature of the claims. After 1734 the claims were again made and two townships were voted for 232 soldiers or petitioners, but no record is found where they were located, if they were located at all. *Mass. House Journal*, Jan. 5, 1737.



In Connecticut similar petitions were taken up earlier, in 1696, and a grant of a township of six miles square was made in 1697 to the "English Volunteers" of the King Philip's War. The final report was not made until 1700, when the township was confirmed under the name of Voluntown to 185 proprietors.<sup>7</sup>

*The Canada Townships.* Very similar to the Narragansett townships the Canada townships were granted to the officers and soldiers and their descendants, who had served in the disastrous Canada expedition of 1690, a part of the King William's War. Following closely on the heels of the first Narragansett township grants, petitions for townships from these Canada soldiers came pouring into the General Court. The latter took the matter up favorably and granted a series of townships, nine in 1735, three in 1736, one in 1738, and three between 1768 and 1771.<sup>8</sup> Following are the more important of these with dates: Roxbury Canada (Warwick, Mass.), 1735; Gorham Canada (Dunbarton, N. H.), 1735; Salem Canada (Lyndeborough, N. H.), 1735; Dorchester Canada (Ashburnham, Mass.), 1735; Gallop's Canada (Guilford, Vt.), 1735; Ipswich Canada (Winchendon, Mass.), 1735; Beverly Canada (Weare, N. H.), 1735; Sylvester Canada (Richmond, N. H.), 1735;

<sup>7</sup> *Conn. Col. Rec.*, IV: 186, 230, 335-336, 357; Bodge, *op. cit.*, 441-444.

<sup>8</sup> *Mass. Acts and Resolves*, XII: 105-106; 140-147; 181-182, 289, 341-342, 348, 457, etc. Consult index. Also *Mass. House Journal*, 1735-1737, *passim*. For the Canada Township of 1768: *Mass. Acts and Resolves*, XVIII: 344-345, 386-387. It consisted of six and one-half miles square with 79 proprietors. For that of 1771: *ibid.*, XVIII: 536, 594-595. The township was of the same extent with 80 proprietors. The names of the proprietors and all legislative actions for all except the last two are conveniently collected in *Society of Colonial Wars, Massachusetts, Publications*, V., 1898. See also *New Hampshire State Papers*, XXIV ("Town Charters," I), Appendix, 787-792.



Weymouth Canada (Ashfield, Mass.), 1735; Rowley Canada (Rindge, N. H.), 1736; Newbury Canada (Salisbury, N. H.), 1736; Cambridge Canada (New Boston, N. H.), 1736; Haywood or Rand's Canada (Peterborough, N. H.), 1738; Sudbury Canada (Bethel, Me.), 1768. It is important to note that only four of these were located within the boundary line of Massachusetts, three in Maine, and the remaining nine in the New Hampshire territory. Each township consisted of a tract of land six miles square and the proprietors numbered sixty in each.

In 1728 one township was granted to the soldiers of Lovewell's War of 1725<sup>9</sup> and in 1735 Manchester was given to the men who served in the Indian wars of 1703 and 1704.<sup>10</sup> There were also innumerable grants of land in plots, varying from 100 to 1,000 acres each, to the soldiers of different wars in consideration of military duties they had rendered. These were merely private military grants, however, and are not important in connection with the history of the proprietors of the period.<sup>11</sup>

*The Frontier Townships.* As early as 1715, the policy of creating contiguous lines of settlements along the Massachusetts frontiers was contemplated.<sup>12</sup> It had been re-

<sup>9</sup> *Mass. Acts and Resolves*, XI: 355, 434-435, 724, 726. 2, 130 acres were also granted to six other soldiers in 1735. *Ibid.*, XII: 246.

<sup>10</sup> *Ibid.*, XII: 105-106.

<sup>11</sup> See for example, *Mass. Acts and Resolves*, XI: 239, 262, 342, 349, 369, etc. The *Massachusetts Acts and Resolves* of this period are full of them. See the index for land grants to soldiers of different wars. As late as 1771, 1,095 acres were granted to an individual. The same was granted in 1737 but not laid out. *Mass. Acts and Resolves*, XVIII: 558.

<sup>12</sup> *Mass. House Journal* (Ford Edition), I: frontispiece, 62 72ff.

peatedly agitated and considered, notably in 1719-20, 1726-8, and 1732,<sup>13</sup> until tiers of frontier townships began to be created in 1736. The reason publicly given for this radical change in the policy of land grants were: the defense and security of the Province against the natives;<sup>14</sup> the settlement of unoccupied regions in view of the growing population, since many persons were leaving the Province;<sup>15</sup> the encouragement of industry and production.<sup>16</sup> Unofficially, the security of the territory by right of occupation must have played an important part in connection with the Massachusetts-New Hampshire boundary contro-

<sup>13</sup> See *Mass. House Journal* for those dates. Also *New Hampshire State Papers*, XXIV ("Town Charters," 1): 749ff. *Mass. House Journal* (Ford Edition), II: 116 and 123 will give light on earlier discussions.

<sup>14</sup> See for example, *Mass. House Journal* for Dec. 9, 1726. In granting the Merrimac-Connecticut townships the House resolved "That it will be greatly to the Honour of His Majesties Government, and tend to the Security and Protection of the Inhabitants of this Province; very much Shorten our Inland Frontiers, both *Westward* and *Eastward*, and vastly lessen the Charge of the Defense of this Government in time of War." Dec. 5, 1727.

<sup>15</sup> *Mass. House Journal* for June 14, 1727, for example, gave as one of the reasons the following: "Room made for great Numbers of His Majesties Subjects to Settle who are by their Increase streightened for want thereof." The removal to the neighboring colonies was referred to very often. *Ibid.*, June 14, 1732. *Mass. Acts and Resolves*, XI: 701-702, in 1733, stated that "Great numbers have removed to neighboring colonies for their accommodations."

<sup>16</sup> See for example, *Mass. House Journal*, June 14, 1732, which referred to many persons without land for industry. One of the reasons stated was "by the Great Increase of His Majesty's Good Subjects, many that are inclined to Industry have not been able to obtain Lands for the Employment of themselves, . . . & great numbers have removed to neighboring colonies for their accommodation. . . ." *Mass. Acts and Resolves*, XI: 701-702.

versy then going on.<sup>17</sup> Possibly more important still, the General Court must have been influenced by the numerous petitions which came pouring into its hall, praying for grants of unoccupied lands. The spirit of speculation is the dominating force in these petitions and all sorts of pretexts and most varied reasons were sought in order to secure a grant.<sup>18</sup> The result was the creation of a most extraordinary series of line townships on the western and northern frontiers, of which the following are the more noteworthy groups:

(1) The Merrimac-Connecticut Townships,<sup>19</sup> comprising a series of nine townships between those two rivers, 1736: No. 1, Warner, N. H.; No. 2, Bradford, N. H.; No. 3, Acworth, N. H.; No. 4, Alstead, N. H.; No. 5, Hopkinton, N. H.; No. 6, Henniker, N. H.; No. 7, Hillsborough, N. H.; No. 8, Washington, N. H.; No. 9, Lempster, N. H.

(2) The Connecticut River Townships,<sup>19</sup> consisting of a series of five townships north of Northfield, 1736: No. 1, Chesterfield, N. H.; No. 2, Westmoreland, N. H.; No. 3, Walpole, N. H.; and No. 4, Charlestown, N. H. on the

<sup>17</sup> Cf. Smith, *Massachusetts and New Hampshire Boundary Line Controversy*, in Massachusetts Historical Society, *Proceedings*, XLV (Nov. 1909): 79ff. Prior to 1726, Massachusetts granted but three townships in the disputed territory, and but eleven townships in whole or in part in the preceding one hundred years in what is now New Hampshire. See also Mathews, *op. cit.*, 82.

<sup>18</sup> *Mass. House Journal* for 1736 and 1737, for example, are full of such examples. On Dec. 21, 1736, thirty petitions of diverse kinds were negatived together. Public services and sufferings were the predominating pretexts, while misfortunes due to Indian massacre, construction of highway on the frontiers, etc., came next. Sixty inhabitants of Framingham petitioned that "not one of the Petitioners ever had any Grant of the Court of the unappropriated Lands." It was negatived, June 24, 1737.

<sup>19</sup> *Mass. Acts and Resolves*, XII: 225, 232, 234, 292-293, 306-307, 342, etc.



east side of the river and No. 1, Westminster, Vt., on the west side.

(3) The Westfield-Suffield Townships,<sup>20</sup> four in all, 1736: No. 1, Tyringham; No. 2, New Marlborough; No. 3, Sandisfield; and No. 4, Becket.

(4) The Ashuelot River Townships,<sup>21</sup> 1734: Upper Ashuelot, Keene, N. H., and Lower Ashuelot, Swanzey, N. H.

(5) The Housatonic River Townships,<sup>22</sup> 1737: Upper Township, Great Barrington, and Lower Township, Sheffield.

(6) The Boston Towns,<sup>23</sup> three in number, 1736-38: No. 1, Charlemont; No. 2, Colerain; and No. 3, Pittsfield.

(7) The Boston Auction Townships,<sup>24</sup> nine in all, 1762.

(8) The Maine Townships,<sup>25</sup> 1762, a series of six townships between Penobscot and St. Croix Rivers: No. 1, Hancock; No. 2, Sullivan; No. 3, Gouldsborough; No. 4, Wind-

<sup>20</sup> *Ibid.*, XII: 225, 331, 232, 234, 380, 422-423, etc.

<sup>21</sup> *Ibid.*, XI: 701-702; XII: 18-19, 24, 46, 493, 531, 677; XIV: 580, 715.

<sup>22</sup> *Ibid.*, XII: 29, 97, 212, 296, 317, 459, 507, etc.

<sup>23</sup> *Ibid.*, XII: 156-157, 275, 516.

<sup>24</sup> The description of these interesting auction towns is given elsewhere.

<sup>25</sup> *Mass. Acts and Resolves*, XVII: 168-174, 191, 211, 299, 474-479, etc. There were also six other townships granted at or about the same time in the neighboring districts. These were individual grants and were not continuous. Much troubles followed in connection with these townships in procuring the King's confirmation, which was one of the conditions of grants, and very little was done before the Revolutionary War period. See *Documentary History of Maine (Baxter Manuscripts)*, XIII: 268-276, 312-313, etc. *The Boston News Letter*, June 20, 1763.

In 1727 an attempt was made to lay out a line of townships in Maine frontiers, between the "Newichawanick river and Falmouth in Casco Bay" and in 1731 one township was actually recommended. But nothing seems to have followed therefrom. *Mass. House Journal*, Dec. 5, 1727; June 12, 1731.

sor; No. 5, Harrington; No. 6, Addison. These townships invariably consisted of a tract of six miles square and each propriety was composed of sixty proprietors. It should be added also that there were numerous individual grants besides these line townships throughout this period. These will be dealt with later.

*The Auction Townships.* The Connecticut method of disposing of the unoccupied lands by public auctions has been already discussed. She resorted to the same method in disposing of her last available territory in the thirties, while Massachusetts also adopted it in the sixties. In these auctions the spirit of speculation reaches its height.

The territory from which a greater number of Connecticut towns was formed in the eighteenth century was the so-called "Western Lands," covering approximately the present County of Litchfield. All of this vast territory, comprising over 300,000 acres, had been granted by the General Court to Hartford and Windsor in 1675. This action was taken in anticipation of the loss of her charter and the fear of Andros's drastic hands. Nothing however granting the privilege of settling this town, practically was done until 1719 when Hartford and Windsor attempted to settle the town of Litchfield. The General Court, while rescinded, at the same time, the former extensive grants to the two towns. Disputes followed and continued until 1726 when it was compromised by dividing the territory between the two towns and the Colony.<sup>26</sup> The portion which the Colony received became to be known as the "Western Lands."

In 1731 the General Court proposed to lay out five town-

<sup>26</sup> See Mead, *op. cit.*, 69-70. Hartford and Windsor made advertisement in 1732 and the General Court authorized the division of their shares among the individual proprietors. The taxable inhabitants of these two towns were then divided into seven companies, each owning a township and the whole territory was divided.

ships in the "Western Lands" and in 1733 the committee appointed for that purpose reported in favor of laying out seven townships to be sold at auction, the proceeds of which were recommended to be applied for the encouragement of education.<sup>27</sup> The whole plan was not finally acted upon until October, 1737, when the General Court passed an act authorizing the sale of seven townships at public auction in certain specified towns of the Colony. Six of the seven townships were divided into 53 rights, Salisbury being divided into 25 rights instead, and after reserving the three rights for religious and educational purposes, the remaining fifty rights were to be sold to the highest bidders, the Court fixing the minimum prices, ranging from £30 to £60.<sup>28</sup> All these townships except one were sold at the time stated and the General Court, in 1738, passed an act empowering the proprietors to meet and divide their lands.<sup>29</sup> Norfolk was not sold even by 1750 and a new auction was ordered in May, 1750, at £200 per right, but the sale was suspended in October for unstated reasons.<sup>30</sup> Another

<sup>27</sup> *Conn. Col. Rec.*, VII: 343-344, 361-362, 412-413, 457-458. The law was passed in May, 1733, authorizing the use of the proceeds for educational purposes in the already settled towns. Additional acts were also passed affirming the same. *Ibid.*, VIII: 387-388, 392-394. The act of 1737 provided, however, that town may vote for the use of ministry instead of for the schools. *Ibid.*, VIII: 122-123.

<sup>28</sup> *Conn. Col. Rec.*, VIII: 134-137. Norfolk at Hartford £50 per right; Goshem at New Haven, £50; Kent at Windham, £50; Salisbury at Hartford, £30; Canaan at New London, £60; Cornwall at Fairfield, £50; Sharon at New Haven, £30. One of the conditions was that the purchasers should be inhabitants of the Colony; other conditions were similar to those of the other towns of the time. See also Mead, *op. cit.*, 71-72.

<sup>29</sup> *Conn. Col. Rec.*, VIII: 169-171.

<sup>30</sup> *Ibid.*, IX: 508, 561.



township was sold in 1755 at a price of £20 for every 100 acres lot.<sup>31</sup>

No less important, possibly more significant, were the nine townships auctioned off by the Massachusetts Province in 1762. As early as 1750-52 the General Court discussed the advisability of selling at auction the townships in the western frontiers.<sup>32</sup> The plan was matured by 1762, a committee was appointed in February to supervise the sale, and nine townships of six miles square each and a tenth of 10,000 acres were sold at public auction at the Royal Exchange Tavern in Boston, on June 2, 1762.<sup>33</sup> These townships, with the purchasers and the prices paid, are as follows: No. 1, East Hoosac (Adams) to Nathan Jones of Weston for £3,200; No. 2, Peru and Hinsdale to Elisha Jones for £1,460; No. 3, Worthington to Aaron Willard of Lancaster for £1,860; No. 4, Windsor to Noah Nash for £1,430; No. 5, Cummington to John Cummings of Concord for £1,800; No. 6, Savoy to Abel Lawrence for £1,350; No. 7, Hawley to Moses Parsons of Middleton, Conn., for £1,875; No. 8, Lenox and Richmond to Josiah Dean for £2,550; No. 9, Chester and Murrayfield to William Williams for £1,500; and No. 10, Rowe, a tract of 10,000 acres, to Cornelius Jones for £380. Each one of the purchasers paid £20 in cash and filed a bond for the remainder, being

<sup>31</sup> *Ibid.*, X: 283, 320, 392, 462. The movement for this auction was started as early as 1744. See *ibid.*, IX: 1, 57-58, 143; X: 66, 117.

<sup>32</sup> Massachusetts Archives, *Mss.*, XLVI: 244-245, 248-249; CXVI: 216-218.

<sup>33</sup> *Mass. House Journal*, Feb. 17, 1762. *Mass. Acts and Resolves*, XVII: 148, 241-243. The sale of land at public auction was very common by this time. For example, *The Boston Post Boy*, May 10, 1762, contained advertisements of three large farms to be sold at auction: "Watchusett" for £50, £5 down; Pot Ash Farm for £500; and a certain 800 acres for £10, £3 down.

entered into in conjunction with from two to six others.<sup>34</sup> The purchase money having been paid, the townships were confirmed to their respective proprietors between 1766 and 1770.<sup>35</sup> In the course of a few years, however, these townships passed into the hands of other proprietors, the original proprietors selling out at a profit.<sup>36</sup>

There is one important difference in the auctions of the two colonies. In Connecticut the townships were divided into fifty odd shares and each share was sold separately to the highest bidders. In Massachusetts, on the other hand, the whole township of six miles square was sold to a single person, although a few others helped him in filing the necessary bond. The result was significant. In Connecticut auction towns there were fifty proprietary rights in each, while in Massachusetts towns there were very few rights and from one to seven controlled the whole township. The speculative transactions and the engrossment took place more easily with the Massachusetts proprietors than with those of the Connecticut towns.

*The "New Hampshire Grants."* The "New Hampshire Grants" were caused primarily by the boundary disputes between New Hampshire and New York, both of which claimed the territory west of the Connecticut River. As in the case of the claim of Massachusetts over the New Hampshire territory, so the New Hampshire authorities

<sup>34</sup> In the case of No. 10, £10 was paid in cash and the remainder by bond. The name of John Chadwick appears three times in these transactions, while those of Elisha Jones, John Murray, Oliver Partridge, William Williams, and John Ashley appear twice respectively.

<sup>35</sup> *Mass. Acts and Resolves*, XVII: 242; XVIII: 124-125, 157-158, 259, 266, 273, 512.

<sup>36</sup> For example, Moses Parson, being unable to pay the price he quoted, sold his township to several persons in Springfield. *Mass. Acts and Resolves*, XVIII: 258, 512. See also the example of Murrayfield described below.

hoped to secure a favorable decision by right of occupation and began to grant towns west of the river as early as 1749.<sup>37</sup> This motive was strengthened by at least two other forces. The Indian wars and the continued trespassing through the wilderness west of the Connecticut River caused the value of the land to be generally known.<sup>38</sup> This disclosure of vast territory was very well interwoven with the speculative spirit of the time, both among the people who petitioned for lands and the executive officials who granted land with profit.<sup>39</sup>

Thus encouraged, the New Hampshire Governors, between the years 1749 when the Indian war was concluded and 1764 when the King in Council decided the controversy in favor of New York, giving her the whole territory west of the River, granted no less than 129 townships in three tiers in that territory. These grants numbered one township each in 1749, 1752, and 1753; two in 1760, sixty-eight in 1761, eleven in 1762, thirty-six in 1763, and seven in 1764. These in the course of time became to be known as the "New Hampshire Grants" in comparison with the New York grants which followed. Besides these townships, the Governor also made numerous individual and military grants in the same territory.<sup>40</sup>

<sup>37</sup> See Fry, *op. cit.*, 266, 274ff. The controversy is sketched on 264ff.

<sup>38</sup> Cf. Belknap, *History of New Hampshire*, II: 312.

<sup>39</sup> Cf. *ibid.*, II: 312-313. Gov. Wentworth, for example, reserved 500 acres, free of taxation, in every township he granted. His family members or relatives dominated the New Hampshire politics of the time. As we shall see later, several members of the Council became proprietors of hundreds of townships created by Gov. Wentworth.

<sup>40</sup> All these town charters are collected in *New Hampshire State Papers*, XXIV-XXVI ("Town Charters," I-III). Volumes I and II deal with the grants of land in New Hampshire east of the River Connecticut, while volume III deals exclusively with the



The same period is also prolific in the creation of townships within the undisputed territory of New Hampshire, east of the River Connecticut. This was particularly true after the conclusion of the boundary disputes with Massachusetts and the war against the Indians. Thus there were granted one township in 1751, six in 1752, six in 1753, sixteen in 1761, three in 1762, nine in 1763, eight in 1764, and so on until 1774 when no less than seventy-five townships were created. As in the case of the territory west of the River, these do not include numerous military and other individual grants which were made particularly after the proclamation of October, 1763.<sup>40</sup>

With a few variations, each township was granted to 60 proprietors and the territory was invariably six miles square. One remarkable fact in consideration of these township grants is the sudden creation, between the years 1760 and 1764, of several thousand proprietors. Moreover these proprietors hailed from all over the New England colonies, New Hampshire and Massachusetts, Connecticut and even Rhode Island.<sup>41</sup> Many of them obtained grants by dozens as we shall see later. Nothing could have produced this phenomenon except the speculative spirit of the time.

*The New York Grants.* The direct counterpart of these New Hampshire grants is found in the New York grants in the territory now Vermont.

grants in what is now Vermont. There are also valuable materials on the subject in the appendices to each volume. It is important to note that most of the townships were granted between 1760 and 1764, very few prior to 1753. As to the military grants, there were six in Vermont in 1764 and thirty in New Hampshire, granted between 1765 and 1774. *New Hampshire State Papers*, XXIV-XXV-XXVI, *passim*.

<sup>41</sup> See Hall, *History of Vermont*, 61-62.

The King's decision in 1764, giving to New York the jurisdiction of all the territory west of the Connecticut River, induced the Governors of New York to grant great numbers of townships in that territory. In 1765 Lieutenant Governor Cadwalder Colden, treating the New Hampshire grants as nullities and the settlers under them as trespassers in the King's domain, initiated the practice of granting land anew to others, mostly to New York speculators. Moreover, enormous patent fees<sup>42</sup> were too great a temptation for the governors and the provincial officers to miss, while the speculative spirit of the time spurred them on in their actions. Then again, the Governors of the several colonies were authorized, by the Proclamation of October 7, 1763, to grant to the reduced officers and discharged soldiers of the late war certain specified quantities of land known as the "military grants." These the governors allowed to be located in the newly added territory.<sup>43</sup> Many of these "military grants" were without specified location, and sooner or later fell into the hands of New York speculators.<sup>44</sup> These speculators were allowed to locate their warrants on the territory west of the River Connecticut.

These different grants mostly turned out to be merely paper grants and, however interesting they may be, do not directly bear upon the New England proprietors beyond the

<sup>42</sup> Hall, *New York Land Grants in Vermont*, in Vermont Historical Society, *Collections*, I (1870): 147-148. The Governor received \$31.25 for every 1,000 acres he patented; the Secretary of the Province \$10, the Receiver General \$14.37½, the Clerk of the Council \$10, the Surveyor General \$12.50, the Attorney General \$7.50, and the Auditor \$4.62½.

<sup>43</sup> A field officer was entitled to 5,000 acres, a captain to 3,000 acres, subaltern to 2,000 acres, a non-commissioned officer to 200 acres, and a private to 50 acres. *Ibid.*, 148ff.

<sup>44</sup> *Ibid.*, 148ff., 159. Note the enormous number of these grants and the cases of speculation.

fact that the spirit of speculation over real estate was in the air at the time and that these blindly-made grants later caused much trouble to the New Hampshire proprietors.<sup>45</sup>

*The Miscellaneous Townships.* Besides the tiers of townships already mentioned and the New Hampshire and New York grants, it is only fair to mention that the several colonies continued to grant individual townships, wherever any space permitted, as in the previous century. These grants were more numerous in Massachusetts by reason of her vast territory and were located both in the Massachusetts proper and in the Maine country after the 'sixties. Yet they were few in number as compared with the speculative grants already noted, although the proprietors thereof also turned out to be as speculative in their character as in other cases.

#### GENERAL SURVEY

It has been already stated that the influence of the boundary disputes, the policy of defense against the Indians, the speculative spirit of the time, and the economic expansion of the century had all blended together in the creation of these townships. So much so that the cautious and prudent policy of the previous century in granting lands was sacrificed for a more careless and very imprudent method. The result of such a radical policy was shown by the difficulties which followed.

In the case of the Massachusetts grants in New Hampshire, the proprietors were left titleless upon the settlement of the boundary line in 1741. The New Hampshire government did not confirm any of the Massachusetts grants, but it made many regrants, often exclusively to the

<sup>45</sup> For these troubles, see Hall, *History of Vermont*, Chapters VIII–XIII inclusive. Also Hall, *History of Eastern Vermont*, Chapters VIII–IX.



original grantees under the Massachusetts grants and to such others as had acquired rights in the soil from the latter. The Masonian proprietors either confirmed the original grants in entirety or admitted the Massachusetts grantees in the Masonian grant of the same town or gave them equivalent privileges in some other townships. A few of the settlers who had made improvements under the Massachusetts title resisted all overtures and several law-suits ensued, but these always ended in favor of the Masonian proprietors.<sup>46</sup> At all events, under the circumstances, there were many proprietors who wanted to remain under the Massachusetts jurisdiction, especially to avoid the exaction of annual quit-rents, and the original proprietors began to petition for equivalent townships elsewhere.<sup>47</sup> In 1765, for example, a committee of the two houses was specially appointed to consider numerous petitions from such proprietors, the report of which committee recommended favorably and several equivalents were granted in that year.<sup>48</sup> Equivalent townships when petitioned, in

<sup>46</sup> *New Hampshire State Papers*, XXVII: ivff. The Masonian Proprietors, in view of these unfortunate experiences, guaranteed in their charters, that in case any law suit arose over the question of land title they would defend it at their own cost and carry the matter to a final issue. But in case the suit was decided finally against them it was stipulated that the grantees should recover no damages. For that purpose "law lots" were reserved in many towns. See Fry, *op. cit.*, 314-315.

<sup>47</sup> Massachusetts Archives, *Mss.*, volumes for "Towns" are full of these petitions. See for example: CXVIII: 7071, 152-153; 109-112; 141-142, 224; 144-151, 163; 267; 410-413, 540; 467-470; 478, 483-486; 487-488; 612, 774-775; 666-667; 751-756; 757-759; etc.

<sup>48</sup> *Mass. Acts and Resolves*, XVIII: 43. *Mass. House Journal*, 1765, 298. Massachusetts Archives, Council Records, *Mss.*, XXV: 428-431; XXVI: 21, 22, 32, etc.

fact, were always granted, usually in the Maine territory.<sup>49</sup>

Moreover, the proprietors experienced many vexatious troubles with regard to the township boundaries, showing the carelessness with which many of the grants were made. Thus the Narragansett No. 1 had a long and thorny boundary trouble with Gorham.<sup>50</sup> The Weymouth township overlapped the Deerfield land and, as soon as the grant was authorized and made, another new survey had to be made.<sup>51</sup> In other cases, a grant often included numerous smaller grants previously consummated, and consequently a larger territory than had been authorized had to be surveyed in order to compensate for the loss occasioned thereby.<sup>52</sup> A typical case of this kind is that of Dorchester Canada (Ash-

<sup>49</sup> Such for example were the following, granted at one time or another, taken at random: Bethel, Maine, for Sudbury, Canada (Massachusetts Archives, *Mss.*, CXVIII: 285); Brighton, Maine, for Rowley, Canada (*ibid.*, CXVIII: 109-112); Raymond, Maine, for Beverly Canada (*ibid.*, CXVIII: 141-142, 224); Turner, Maine, for Sylvester Canada (*ibid.*, CXVIII: 70-71, 152-153); Waterford, Maine, for No. 6 (*Mass. Acts and Resolves*, XVIII: 770); Paris, Maine, for No. 4 (Massachusetts Archives, *Mss.*, CXVIII: 410-413, 540); Livermore, Maine, for Westmoreland (*ibid.*, CXVIII: 467-470); Baldwin, Maine, for Walpole (*ibid.*, CXVIII: 612, 774-775); etc. See also *Mass. Acts and Resolves*, XVIII: 47-49, 58, 127, 169-170, 288-289, 514, 537-538, 542-543, 564-565, 593-594-595, 747-748, 753-754, etc. Equivalents for the individual grants were also numerous. For example, *ibid.*, XVIII: 44-47, 118, etc. See index for more examples.

<sup>50</sup> *Narragansett No. 1 Proprietors' Records*, 165, 175, 177, 269, etc. *Mass. Acts and Resolves*, XVII: 142, 332; XVIII: 228, 253, etc. The boundary disputes between towns, due to geographic ignorance and unsatisfactory survey, were characteristic of practically all townships from the previous century. But the eighteenth century townships witnessed these troubles more than the earlier townships.

<sup>51</sup> *Mass. Acts and Resolves*, XII: 310, 332.

<sup>52</sup> When such grants were overlooked in the grants, additional territory was petitioned for the Court usually granted it.



burnham) which included six older and smaller grants within the territory, namely, the Starr grant, the Cambridge grant, the Lexington grant, the Bluefield grant, the Converse grant, and the Rolfe grant.<sup>53</sup> These were, of course, small, independent grants and the proprietors had no power over them. Murrayfield, the Boston Auction township No. 9, contained four large previous grants, including one of 2,000 acres and another of 4,800 acres, and the proprietors petitioned for an additional grant. They however received only 1,200 acres.<sup>54</sup>

An additional source of trouble was in the nature of the soil itself. The contiguous townships were planned and granted originally on paper without reference to the quality of the soil or topography of the country. The grantees, being mostly speculators, claimed the land they had never seen before. Consequently the quality of the soil became a constant source of difficulty, which was only met by additional grants. It is true that in many cases a liberal allowance was made at the time of survey for highways, ponds, swamps, rivers, and rocky hills, but the result was far from satisfactory. This kind of complaints was almost universal throughout the several colonies.<sup>55</sup>

Another point which greatly affected the spirit of speculation but which helped the conquest of frontiers, was the conditions of grants. Equally in Massachusetts, in Connecticut, and in New Hampshire certain conditions were imposed upon the grantees before the land was allowed to become private or proprietary property. These conditions differed widely in details, but agreed in principle. Discarding the minor differences, the requirements may be summarized as follows: to lay out the land in equal shares

<sup>53</sup> Stearns, *History of Ashburnham*, 51.

<sup>54</sup> Murrayfield Proprietors' Records, *Mss.*, I: 49-50, 51, 52.

<sup>55</sup> See for example, *Mass. House Journal*, June 24 and 28, July 1, 1737; Dec. 8 and 27, 1738; etc.



corresponding to the number of proprietors; to reserve three additional shares, one as a gratuity to the first settled minister, one for the maintenance of the ministry, and one for the support of the town school;<sup>56</sup> each grantee to build a house of specified dimensions on his respective home lot and to clear a certain amount of land for cultivation, usually from five to six acres, within a specified time, usually from three to seven years and to continue improving; to settle one family on each lot;<sup>57</sup> to settle "a learned orthodox minister" and to build a convenient "meeting house for the public worship of God"; and to file a bond of certain amount to guarantee the fulfillment of these conditions. The principal points, then, were to settle families with homes, to clear the soil for cultivation, to prepare for the religious life, and to provide for the public education.

In the New Hampshire grants, both provincial and Masonian, reservation was made of all white pines above a certain dimension for the royal navy, while in all of the New Hampshire provincial grants the grantees were required to pay an annual "Rent of one Ear of Indian Corn" for the first ten years and thence forever an annual quit rent of "one shilling Proclamation Money per every Hundred acres" of land. The Masonian proprietors did not require any quit-rent, but they reserved fifteen shares in each township they granted, to be free of any charge or taxation until improved; they often reserved two "law lots" also for their two lawyers. The New Hampshire charters likewise invariably reserved 500 acres for the

<sup>56</sup> In the equivalent townships granted by Massachusetts in the sixties, an extra share was reserved for the benefit of Harvard College. In Connecticut, reservations to aid Yale College were often made.

<sup>57</sup> In some cases certain number was specified for so many years, as forty families in four years, etc.

Governor and often some of the members of his Council were included among the grantees, each receiving one share. In them also reservation was often made for the Incorporated Society for the Propagation of the Gospel in the Foreign Parts and for a glebe for the ministry of the Church of England. Before 1760, very few had reservation for a school; in some after that, only the minister and the school were taken care of. Moreover, in every provincial charter granted by the New Hampshire government there was an incorporation clause whereby the township was passed as incorporated and the inhabitants were entitled to all the privileges and immunities that other towns within the province exercised and enjoyed.<sup>58</sup> These rights were not conferred by the Massachusetts and Connecticut governments, nor the Masonian proprietors, and it was necessary for the inhabitants to apply later to the respective governments for such a privilege of incorporation.

The fulfillment of such conditions, particularly the settlement of so large a number of families within so short a time in so many townships, was quite a difficult problem. They were completely fulfilled in rare cases, partially in small number of towns, and scantily in the majority of them. Indeed, they turned out to be a means by which the speculative pulse of the proprietors could be easily felt. Before placing our hands upon that pulse, however, we must first note the general character of the proprietors.

#### GENERAL CHARACTER OF THE PROPRIETORS

Just as the method of granting these townships was a

<sup>58</sup> Fry, *op. cit.*, 288-291, gives an extended account of these conditions in New Hampshire charters. I have referred to this part of New Hampshire charters in connection with the organization of the proprietors. Even provisions were made for weekly markets and annual fairs in the earlier charters of Bening Wentworth.

radical departure from that of the previous century, so was the general character of the proprietors whom those numerous grants created. In general it may be safely stated that the majority of them were either land-jobbers or speculators who were interested primarily in their personal profit through adventurous speculation in land and secondarily in the settlement of the unoccupied western frontier, if at all.

The speculative motive and practice of many of these proprietors, beyond what the grants of townships themselves generally had shown, are clearly shown in the way the proprietary shares were bought and sold. Of the 126 original proprietors of the Narragansett township No. 4 (1732), there was hardly any original proprietors left on the role of the shareholders after 20 years. Moreover, a small number of outsiders acquired the greater part of the interest in the township. Thus, 14 persons represented 54 rights in 1735, 16 persons 89 rights in 1748, 15 persons 70 rights in 1750, and 8 persons 42 rights in 1754; and in every case, with a few exceptions, a complete new list of names appear as holders of the respective rights.<sup>59</sup> Haywood's Canada, now Peterborough, N. H., is another, possibly an extreme, example where within one year after the grant of the township the whole propriety of sixty shares was under the control of six men. Of these six, three had bought up 14 shares each, one managed to acquire 16 shares, while the remaining two had one each. After the lapse of

<sup>59</sup> Proprietors' Records of Narragansett No. 4, 1732-1778, *Mss.*, A: 67-68, 75, 94. Also, 78, 91. In 1735, one proprietor owned 17 shares, another 6, and two proprietors 5 each. In 1748, one person owned 9, 8, 7½, 7 shares, etc. In 1750, the highest was 10 sharesholder; while two owned 7 shares each, two 6 shares each, and another two 5 shares each. In 1754, the highest number was 9, followed by 8, 5, 4, etc.



another year, the latter two, the original proprietors, dropped out and the remaining four acted as the sole owners of the township.<sup>60</sup> It is not to be wondered then that the first meeting of the proprietors, which was held in Boston, met on the same day the notice of the meeting was posted.<sup>61</sup> Among the proprietors of Dorchester Canada (Ashburnham), a certain Caleb Danna at one time held one-eighth of the whole township, while, when that propriety was dissolved in 1781, there were only three original proprietors and three heirs and twenty shares were held by six men.<sup>62</sup> The Monadnock township No. 5 (Marlborough) is another example where the proprietors changed hands entirely in twenty years, while several of them had gathered several extra shares, as for example, Jonathan Blanchard.<sup>63</sup>

The Boston auction township No. 9 (Murrayfield) is a typical example of another sort. The whole township was purchased by William Williams in 1762 for £1,500. Before the year was over he sold the full right over the township to John Chandler, Timothy Paine, John Murray, and Abija Willard, while the first three of them, in June, 1763, sold one-fifth part of their undivided three-fourths shares to James Otis of Barnstable who gave the power of attorney to Murray. These five proprietors controlled the township

<sup>60</sup> Smith, *History of Peterborough*, 26. He even wrote: "Many of them must have disposed of their rights before the grant was finally made, on the 14th of June, 1738. . . Every man and woman who signed that petition of December 7, 1737, forgetting the fervent zeal . . . , sold out, pocketed the profits, and was ready for another adventure." *Ibid.*, 25-26.

<sup>61</sup> *Ibid.*, 25-26.

<sup>62</sup> Stearns, *History of Ashburnham*, 105, quoting proprietors' records.

<sup>63</sup> *New Hampshire State Papers*, XXVII: 452-454.

and kept selling their rights and lands from time to time.<sup>64</sup> John Hill of Boston was a type of these speculative proprietors. Between 1727 and 1740 he was either grantee or became part proprietor of at least eight townships in the Massachusetts's New Hampshire grants, while John Fowle of Woburn was sole or part proprietor of six townships in the same section.<sup>65</sup>

The New Hampshire grants show even more remarkable speculative spirit. John Nelson, a wealthy West India trader of Portsmouth, headed the list by becoming proprietor of no less than 46 townships in New Hampshire and Vermont, principally between 1761 and 1764.<sup>66</sup> Other outstanding speculative proprietors of the same period were William Kennedy who was proprietor of 21 townships, William Temple of 20 townships, Samuel Averil of Connecticut of 24 townships, James Nevin of 39 townships, John Temple of 19 townships, and Col. Josiah Willard, a noted Massachusetts land-jobber of the period, of 18 townships.<sup>67</sup> In the Monadnock township No. 4 (Fitzwilliam, 1752)

<sup>64</sup> Murayfield Proprietors' Records, *Mss.*, I: 1-4. Willard owned 15 shares; Murray, Chandler, and Paine owned 12 shares each; and Otis owned 9. For sales of rights and lands, see *ibid.*, I: 30, 32, 36, 37, 42, 47, 49, etc. In 1763, 500 acres tract was sold for 225. *Ibid.*, I: 26-27.

<sup>65</sup> John Hill was an original proprietor of the Merrimac-Connecticut township No. 4 (Hillsborough) and bought up the whole township with Goshom Keys, another Boston speculator, and sold the land to individuals at profit. One Samuel Browne bought 1,000 acres for £500 cash. *New Hampshire State Papers*, XXIV: 140-141. See also, Smith, *Massachusetts and New Hampshire Boundary Line Controversy*, Massachusetts Historical Society, *Proceedings*, XLIII (1909): 84.

<sup>66</sup> 19 in 1761; 5 in 1762; 13 in 1763; 1 in 1764; etc. His speculative interest began about 1750 and continued until about 1772. *New Hampshire State Papers* ("Town Charters"), *passim*.

<sup>67</sup> These are computed from the list of proprietors given in *New Hampshire State Papers* ("Town Charters").

granted by the Masonian proprietors, Col. Sampson Stoddard owned 55 shares, James Reed 9, Mathew Thornton 8, Abel Lawrence and Jona Lovewell 3 each.<sup>68</sup> Gov. Benning Wentworth, the initiator of the New Hampshire grants, reserved 500 acres in every township he chartered, while his relatives and friends in the Council dominated the propriety in many a township.<sup>69</sup> In Connecticut the speculative spirit was no less evident. Noah Nash of Hartford, for example, bought up some 20 shares between 1765 and 1773.<sup>70</sup> Nicholas Cook of Providence and Joseph Bennet of Coventry, R. I., were two of the notable Rhode Island speculators who dealt with the newly created townships in Connecticut, Massachusetts, and New Hampshire.<sup>71</sup>

Such a process of the acquisition by a few of a large part of the propriety and the subsequent sale was accomplished, more generally, through land agents who traversed, not only New England towns, but also as far as New York and New Jersey and successfully sold numerous rights.<sup>72</sup> Cadwalder Colden, Lieutenant Governor of New York at this

<sup>68</sup> Norton, *History of Fitzwilliam, New Hampshire, 1752-1887*, 62-67, quoting proprietors' records.

<sup>69</sup> For example, Theodore Atkinson, a brother-in-law of Gov. Wentworth and a most influential member of the Masonian Proprietors, was proprietor of 263 townships; Theodore Atkinson, Jr., of 172 townships; John Wentworth, a brother of Gov. Wentworth, of 260 townships. *New Hampshire State Papers* ("Town Charters"), *passim*.

<sup>70</sup> Barker, *History of Cheshire*, 7, quoting from the Registry of Deeds.

<sup>71</sup> *Ibid.*, 73-74, 78-81-85.

<sup>72</sup> See for example, the notices in the New York and Connecticut papers of the period. *The New York Gazette*, April 21, 1763; Feb. 2, 9, and 16, March 6 and 26, and April 16, 1764; etc. *The New York Mercury*, May 21, 1764. *The Connecticut Courant* for 1765, *passim*.



time, wrote to the Lord of Trade and Plantation, for example, in 1764:<sup>73</sup>

“Grantees or Persons employed by them travelled thro’ all parts of this and in the Neighboring Province of New Jersey publicly offering the Lands to sale at such low rates as evince the claimants had no intention of becoming settlers either from inability or conscious they could derive no title to the Lands under the Grants of New Hampshire.”

Nineteen days later he again wrote:<sup>74</sup>

“... A man in appearance no better than a Pedlar, has lately travelled thro’ New Jersey and this Province, Hawking & selling his pretended Rights to 30 Townships on trifling considerations.”

These agents seem even to have reached England as a field of their activities.<sup>75</sup> The Great Proprietors, such as those of the Plymouth Company, Lincolnshire Company, and Pemaquid Company, invariably employed agents to promote their respective interests in disposing of their lands as well as procuring settlers upon their territories.<sup>76</sup> Because of these activities, the real estate dealers began to appear as early as 1744 in Boston, while in the seventies the sale of land has become an end in itself and one Jacob Valk advertised himself as a “Real and Personel Estates Dealer.”<sup>77</sup>

<sup>73</sup> Colden, *Colden Letter Book*, New York Historical Society, *Collections*, 1876, I: 288. Dated Jan. 20, 1764.

<sup>74</sup> *Ibid.*, I: 304. Dated Feb. 8, 1764.

<sup>75</sup> *Letters and Papers of John Singleton Copley and Henry Pelham*, 1739-1776, Massachusetts Historical Society, *Collections*, LXXI (1914).

<sup>76</sup> See below the account of their activities.

<sup>77</sup> Andrews, *Colonial Folkways*, 44. See also *The Boston News Letter*, for Nov. 11-18 and Dec. 23-30, 1725, where already lands in Canterbury, Conn., and Haverhill, Mass., were advertised by agents 1,500 acres and 1,180 acres respectively.

Land speculation was not limited to the newly created townships alone; it swept the proprietors of the older towns equally. Thus we read that Major James Fitch, a noted land jobber in Connecticut, owned by legislative grants and purchases an immense tract of land in several Connecticut towns.<sup>78</sup> Charles Apthorp, a New York land speculator, bought up 36 out of 70 rights in Lancaster, Mass., between the years 1765 and 1770 and dominated the proprietors' meetings through his agents.<sup>79</sup> Ezekiel Kellog of Hadley, Mass., was another noted land speculator who bought and sold even as far as Rhode Island.<sup>80</sup>

Some details of the way by which these speculators worked may be gleaned from the diaries and itineraries of Ezra Stiles, a Connecticut minister who was caught by the speculative mania of the time and himself bought numerous rights in Connecticut, Massachusetts, and New Hampshire.<sup>81</sup> That he was aware of the adventure and the speculative nature of the purchases he himself admitted:<sup>82</sup>

“Probably most of the New Hampshire Rights will become forfeit; perhaps I may clear a few. But Col. Lydius's will become of Value of £50 Sterling each before they revert; and if my Heirs are careful, they may easily secure them forever . . .”

<sup>78</sup> Caulkins, *History of Norwich*, 137. He owned 4,000 acres in Plainfield, 5,000 acres in Woodstock, etc.

<sup>79</sup> Sonnes, *History of Lancaster*, 30, 39–40. See particularly the letter of W. Molineaux, his attorney, to Edward Buckman, another of his attorneys, dated Boston, Oct. 21, 1771, quoted in full, 40–41.

<sup>80</sup> Judd, *History of Hadley*, 292, where a detailed account of his speculative activities is given.

<sup>81</sup> Stiles, *Extracts from the Itineraries and Other Mischellanies of Ezra Stiles, 1755–1794*, 86, 92, 183–184, 141, etc. He accumulated 3 and  $\frac{3}{4}$  shares of the Susquehanna Company also. *Ibid.*, 184.

<sup>82</sup> *Ibid.*, 184, dated 1762. Lydius was the one who sold him some shares.

In 1761 rights in Westminster, Vt., sold for £40 apiece.<sup>83</sup>  
In the same year Stiles wrote about Chester, N. H.:<sup>84</sup>

“50 Dollars Price of Rights in New Town. He a man gave for 80 acres wild but good Land in Chester £1,200, or £15 per acres. Mr. Allen of Chester agrees to sell me a *free* Right in New Chester or Perry’s Town (Hill, N. H.) for 40 dollars . . .”

He envies a certain Rev. Samuel Hall who made a large profit out of speculation and writes:<sup>85</sup>

“About 1722, bought 1000 acres in Waterbury for £40 O. T. and has since sold the same without improvement for about £1000 Proc. The last 600 acres he sold, 1761, for £600 Proc. to be paid in 6 years with 6% interest till paid. 1718 he bought 1500 acres in Cold Spring for £34 O. T.; in 1744 sold for £1000 O. T.”

While on his way to Boston in 1761 he bought of a traveling salesman at Dedham a right in one of the lately created townships for two dollars, exchanged deeds, “which he took and promised to execute and deliver.” But he later added: “Nothing.”<sup>86</sup> Stiles also refers to the land transactions of 1769 between Henry Price and Robert Stevens of Newport, R. I., where the price of land quoted was £200 per right at New Concord and £100 per right at Hereford.<sup>87</sup>

Such being the case, the next characteristic to be noted

<sup>83</sup> *Ibid.*, 81.

<sup>84</sup> *Ibid.*, 99.

<sup>85</sup> *Ibid.*, 161; also 116, 151, etc. He writes that, at Housatonic No. 3 a farm was worth only £100 Old Tenor when it was started; then it was worth £10,000 Proc. *Ibid.*, 116.

<sup>86</sup> *Ibid.*, 99–100.

<sup>87</sup> *Ibid.*, 87–88. Robert Stevens bought four rights in New Concord but refused to buy Hereford shares by saying: “If can engage settlers, shall incline to take part there also.” This evidently shows that the speculators even were aware of the conditions of settlement attached to each right, which subject I shall touch elsewhere.



as peculiar to the majority of these proprietors is the heterogeneity of the members and the practical lack of unity in the propriety. The proprietors of one township were scattered over a wide area and among many different towns and often in several colonies. A few examples will again illustrate the wide variety. The proprietors of the Narragansett township No. 4 (Goffstown, N. H.) were composed of the people from forty towns in Massachusetts, Connecticut, and Rhode Island.<sup>88</sup> The proprietors of the Narragansett township No. 2 (Westminster, Mass.) were scattered over nine Massachusetts towns: Charlestown, 33; Watertown, 26; Cambridge, 18; Sudbury, 11; Reding, 11; Newtown, 7; Malden, 6; Weston, 5; and Medford, 3.<sup>89</sup> The Dorchester Canada (Ashburnham, Mass.) proprietors were distributed over fifteen towns: Dorchester, 25; Milton, 8; Boston and Stoughton, 5 each; Lancaster, 4; Roxbury, 3; Taunton, 2; Framingham, Braintree, Harvard, Wrenham, Lunenburg, Needham, Sudbury, and Attleborough, 1 each.<sup>90</sup> One more example of the Ipswich Canada proprietors is very illustrative: Ipswich, 52; Gloucester, 3; Rowley, 2; Boston, Andover, and Beverly, 1 each.<sup>91</sup>

The explanation of such heterogeneous character of proprietors is not difficult. The Canada and Narragansett townships were granted to the soldiers and officers and their heirs who served in the Indian wars of 1675 and 1690, but every pretext was advanced to claim a right or two. These applicants, moreover, were listed by the Committee in

<sup>88</sup> Narragansett Township No. 4 Proprietors' Records, *Mss.*, 2-4. Bridgewater, 14; Taunton, and Rehoboth, 11 each; Woodstock, 7; Marshfield, 6; Norwich and Lebanon, 5 each; Pomfret, Dighton, and Pympton, 4 each; etc.

<sup>89</sup> Heywood, *History of Westminster*, 53-55. The names with towns whence they came are given there in entirety.

<sup>90</sup> Stearns, *History of Ashburnham*, 53-56.

<sup>91</sup> Marvin, *History of Winchendon*, 33.

charge and divided at random, grouping them to fit the number of townships contemplated. The result was the scattering of proprietors over a wide area. In others, the speculative current helped to spread the shares by sales and transactions after the actual grant had been made. Such was particularly the case in the New Hampshire grants, where the proprietors lived sometimes in three or four colonies,—New Hampshire, Connecticut, Massachusetts, Rhode Island and New York.<sup>92</sup> The diversity of proprietors and the lack of unity, it will be noted later, were chiefly responsible in retarding the settlements and in creating the embarrassing problem of delinquency.

One consequence of speculation and heterogeneous character of the proprietors was the multiplication of absentee proprietors. Of the sixty original proprietors of Dorchester Canada, only one had actually settled, while the remaining fifty-nine never saw the place.<sup>93</sup> The proprietors of the Boston auction townships No. 9 never settled the township, but they divided up land in several divisions among themselves, a paper division it may be called.<sup>94</sup> A similar case is that of Winchester, Conn., of whose 106 original proprietors not one settled.<sup>95</sup> The proprietors of Narragansett No. 4 were scattered over Connecticut, Rhode Island, and six counties of Massachusetts and never actually settled the township.<sup>96</sup> In Union, Conn., three-fourths of

<sup>92</sup> See for example such towns as Cornwall, Middlebury, Pawnall, or Salisbury, all in New Hampshire. The proprietors of Cornwall lived in Massachusetts, Connecticut, and New York. The Connecticut Courant, March 11 and June 3, 1765. *The New York Gazette*, Feb. 2, 1764.

<sup>93</sup> Stearns, *History of Ashburnham*, 56, 78. A similar case is that of Amherst. See Secomb, *History of Amherst*, 36.

<sup>94</sup> Murrayfield Proprietors' Records, *Mss.*, I: *passim*.

<sup>95</sup> Boyd, *Annals of Winchester*, 31.

<sup>96</sup> Narragansett No. 4 Proprietors' Records, *Mss.* Also *Mass. House Journal*, June 10, 1737.



the land was owned by non-resident proprietors,<sup>97</sup> while at Cornwall, 12,000 acres of the 25,000 acres were owned by absentee proprietors.<sup>98</sup> Even if some of the proprietors actually settled the township, they were always in the minority and the majority remained as absentees. In the New Hampshire grants, both in New Hampshire and Vermont, the majority of the proprietors were non-resident, and cared so little to settle the townships that numerous charters of regrants had to be issued, revoking the original and creating an entirely new propriety. For example, of the sixteen townships granted in 1761 in New Hampshire, twelve had to be granted anew in the following years, while all the three townships granted in 1762 had to undergo the same process. Not one of the proprietors of Marlborough settled in the township.

#### FAILURE TO FULFILL CONDITIONS

The fulfillment of the conditions of a grant as a prerequisite to the final ownership of land brought about two tendencies among the proprietors of the century. A minority party everywhere vigorously urged the settlement of townships and liberally expended their money and energy for the purpose. A majority, on the other hand, represented the speculative group who were inclined to look to only the profit of the grant and neglected to do their respective duties in fulfilling the conditions. The balance of weight, measured by the result, was characteristically with the latter.

As far as the proprietors were concerned the result of inducements and diverse encouragements in general was not highly satisfactory and the settlements were exceedingly slow and scattered. I have found no case in which the

<sup>97</sup> Connecticut Archives, Towns and Lands, *Mss.*, VIII: 231.

<sup>98</sup> *Ibid.*, VIII: 273, 278.



conditions of grants were fulfilled within the specified time. Thus, for example, the Massachusetts General Court was literally flooded, particularly after 1750, with the proprietary petitions, stating the reasons for the delay in settlements and praying for the extension of time within which to fulfill the conditions of grants.<sup>99</sup> The problem became so acute that the Court took up the matter in 1750 and enacted a law in June, requiring the clerks of the towns granted within thirty years past to file with the General Court before the following December the "attested Copies of such Grants with an Accompt of the names of the Persons who have & who have not fulfilled the conditions of the same." This was reenacted in February, 1751.<sup>100</sup> The reports from the townships show that very little was actually done toward fulfilling the conditions in the majority of the townships.<sup>101</sup> Generally speaking the policy of the government was very lenient; almost always the extension of time was granted, ranging from eighteen months to two years, while a few were dismissed without hearing.<sup>102</sup> In the New

<sup>99</sup> The manuscript materials on towns in the Massachusetts Archives, after 1740 in particular, are full of these petitions. See for example, Massachusetts Archives, *Mss.*, CXIV: 537, 580-581; CXV: 681-683, 113-115; CXVI: 339-340, 246-247, 635-636; CXVIII: 93-94, 120, 197-188, 222-223, 268, 294-295, 341-342, 421, etc. Exemptions even from taxation were petitioned later on the ground of the difficulty of settlement and almost always granted. *Ibid.*, CXVIII: 36-38, 39, 51-53, 40-41, 42, 43, 98-99, 44, 61-63, 91-92, etc. This was due to the province tax in the early sixties.

<sup>100</sup> *Mass. Acts and Resolves*, XIV: 422, 479.

<sup>101</sup> These reports are found scattered over the Massachusetts Archives, Towns, *Mss.*, CXV-CXVI. As usual the well settled townships reported, while the others failed even to report. Sandisfield (No. 3), Berwick, Petersham, Bedford, Narragansett No. 4, and Narragansett No. 6 were a few of those reported settlements. See *ibid.*, CXV: 697-680, 707-708-710, 752, 753-754, 756-758, 811; CXVI: 27.

<sup>102</sup> *Mass. Acts and Resolves* of the period, *passim*.

Hampshire grants the result was overwhelmingly unsatisfactory. There, not only numerous extensions and "renewals" of charters were made upon petitions, but many "regrants" had to be made. In the latter case, the same townships were granted to altogether new sets of proprietors.<sup>103</sup>

Despite the well-meaning attempts on the part of the minority of the proprietors, the verdict of history is that they failed in general to fulfill the conditions of their grants. In studying over the factors which retarded the fulfillment of conditions, we can see once again the true nature of the eighteenth century township grants and the speculative character of the proprietors.

First of all the colonial governments themselves were partially responsible at least in two respects, in the manner of creating townships and the number created. The uncertainty of titles due to the ambiguity of colonial boundaries caused much anxiety for the proprietors of many towns.<sup>104</sup> This was especially true of the Massachusetts grants in New Hampshire and the New Hampshire grants west of the Connecticut River.<sup>105</sup> The proprietors in those townships had to obtain either the confirmation of the title from the government in whose favor the district was awarded or the equivalent townships elsewhere. The Masonian Proprietors confirmed the earlier Massachusetts titles and the

<sup>103</sup> *New Hampshire State Papers*, XXIV-XXV, *passim*.

<sup>104</sup> See above, 204-207.

<sup>105</sup> In 1749, the proprietors of one of the New Hampshire towns which were granted by Massachusetts petitioned the General Court for the measure to settle land title in an easier way and stated that the disputed title to land is the source of discouragement to the settlement of many an area in the Province. A committee was appointed for the purpose of investigating the subject by the Assembly, but the Council non-concurred. *Massachusetts Archives, Mss.*, LXVI: 196-198. Nov. 22, 1749.



New Hampshire government leniently regranted to the same proprietors.<sup>106</sup> The New York authorities very rarely confirmed the New Hampshire title west of the River Connecticut. The question of equivalent townships was met by the Massachusetts government with justice and numerous such grants were made on the Maine coast. In addition to these broader boundary disputes the overlapping boundaries between townships and the compensations for the formerly consummated grants within a township grant caused much trouble to the proprietors. Moreover, the quality of land was the source of much complaint, particularly in the tiers of townships which were planned without due regard to the nature of the soil nor topography of the country. The result was many petitions for additional grants or exchange of land.<sup>107</sup>

Then, the proportion between the suddenly multiplied number of townships and the existing population was an important adverse factor in the settlements of the frontier districts. It is too evident a fact that no large and quick settlements can be very well carried out without the necessary surplus population. Even if there was a surplus population in the several New England colonies during

<sup>106</sup> The proprietors of New Boston, N. H., No. 6 in the Massachusetts grant but confirmed by the Masonian Proprietors, for example, stated, in reply to the Massachusetts survey of townships in 1750-1751, that they have gone into much trouble in adjusting title with the Masonian Proprietors and that the latter's terms were "too extravagant" to be fulfilled. It added also that, for that reason, many proprietors sold their shares to the inhabitants of New Hampshire and since then nothing was done. Massachusetts Archives, Towns, *Mss.*, CXV: 841-843. Bedford, Narragansett No. 5, was divided into halves by the boundary line of 1741-1741, but the Masonian Proprietors confirmed the title in 1748. *Ibid.*, CXV: 844-850.

<sup>107</sup> See above for the treatment of these subjects, 206 and foot note 49.



the first half of the eighteenth century, the number of townships granted was too large to supply the need.<sup>108</sup> Hutchinson was quite honest in his statement when he wrote:<sup>109</sup>

“But the court, by multiplying their grants, rendered the performance of the conditions impracticable, there not being enough people within the Province willing to leave the old settled towns, and the grantees not being able to procure settlers from abroad.”

Moreover, the disturbed conditions on the frontiers played an important part in delaying the conquest of wilderness. The Indians had, time and again during the eighteenth century, raided the English settlements on the newly extended borders. They had burned and ravaged, maimed and murdered, often altogether extinguishing the first feeble light of settlement. This was particularly true on the northern part of the Connecticut and Merrimac valleys and on the Maine frontiers. Then too there were organized expeditions against the Indians and the French which, not only took the men away, but placed a check upon the frontier settlements. The period of the King George's War in the forties and the French and Indian War in the fifties particularly affected the proprietors. The numerous petitions for the extension of time, to which I have already referred, in fact mentioned Indian affairs as an important cause of impediment to settlement. When Massachusetts made the survey of the condition of township settlements in 1750-51, this was one of the prevailing excuses offered for the non-fulfilling of conditions. “Warrs and Roumers of Warrs,” reported the proprietors' clerk of Berwick, “has

<sup>108</sup> See below 258ff. for a detailed treatment of the activities of the Great Proprietors in their effort to obtain settlers, especially the European immigrants.

<sup>109</sup> Hutchinson, *History of Massachusetts*, II: 300.

much hendred and Backwarded the Settlements of the New Towns.''<sup>110</sup>

Last but most important, the speculative character of the proprietors was the strongest factor in the delaying settlements. Speculative, heterogeneous, and ununified proprietors were always in the majority and they cared very little about the settlements of the township as long as they could see the profit.<sup>111</sup> Hutchinson again has well characterized the difficulty:<sup>112</sup>

“A trade of land-jobbing made many idle persons, imaginary wealth was created, which was attended with some of the mischievous effects of the paper currency, viz. idleness and bad economy, a real expense was occasioned to many persons, besides the purchase of the grantee's title, for every township by law was made a propriety and their frequent meetings, schemes for settlements, and other preparatory business, occasioned many charges.”

The natural result was the sudden increase of delinquent proprietors who refused both to fulfill their part in the settlement of towns and to pay their shares in meeting the necessary expenses of the propriety.

The enormous proprietary tasks, including settlements of townships, regular meetings, building of roads and mills,

<sup>110</sup> Massachusetts Archives, Towns *Mss.*, CXV: 752. Sandisfield (No. 3) mentioned Indian trouble as a chief impediment for settlement. *Ibid.*, CXV: 707–708. Bedford complained that the first built houses were all burned by the Indians. *Ibid.*, CXV: 756–758. Warwick (Gardner's Canada) laid a strong emphasis on repeated Indian raids as a main cause of delay. *Ibid.*, CXVI: 8. Gray, Maine, reported that the Indian wars drove out everything from the townships. *Ibid.*, CXVI: 20. Dummer, in commenting upon the reasons for retarding settlement of the Maine townships, pointed out that “the principle and perhaps only material” obstacle was the “exposed situation to the Indian enemy in case of rapture.” Williamson, *History of Maine*, II: 77, note 97.

<sup>111</sup> See above 209.

<sup>112</sup> Hutchinson, *History of Massachusetts*, II: 300.

induction of ministers and erection of meeting houses, prosecution of trespasses, surveys for the division of land and employment of agents, meant an enormous expense to the proprietors. On the other hand, scattered over a wide area and the majority inspired by a speculative spirit, the proprietries were not, as I have already noted, unified machines acting in perfect harmony. Moreover, because no large profit accrued during the first years of settlement, there probably followed a certain amount of disillusionment. The result was the rise of delinquency, one cause of non-settlement of many townships. The delinquent proprietors thus became a common subject of complaint both among the proprietors themselves and the inhabitants, as well as of legislation by the government.

The proprietors were the first to complain. A typical example is that of the petition of John Hill and others, the proprietors of a Maine township which was granted in 1736,

“Shewing that for the effectual Settlement of the Town agreeable to Grant they have had sundry Meetings, passed many Votes, and Granted Taxes, and come into diverse Orders for their regular Proceeding; but some of the Grantees refuse and neglect to make Payment of their Proportion of the Taxes assessed on them; praying the Proprietors may be impowered and enabled to make Sale of Lands of such Delinquents, the Proceeds whereof to be applied for the Uses of the Grant of Taxes mentioned.”

The request was granted and the delinquent rights were ordered to be sold upon twenty days notice and to admit others in their respective places.<sup>113</sup> But before considering these actual cases, let us first examine the attitude of the government toward this important question.

<sup>113</sup> *Mass., House Journal*, July 2, 1737.



As early as June 24, 1738,<sup>114</sup> the Massachusetts Province had passed an act regulating the delinquent proprietors. After stating in the preamble that there is no means of enforcing in the lately granted lands or townships the charges voted by the proprietors in case they refused to pay the same, the Act declared that the land of the delinquent grantees in the new townships be sold at public auction after thirty days notice in one or more newspapers. The money thus raised was to be applied for defraying the charges and if there was any "overplus," one-half was to be given to the town and the other half to be returned to the delinquent proprietors or their heirs or representatives. Two things were added in the proviso: that, if the delinquent proprietors are not residents of the Province, the liberty of redemption is reserved to them by the payment of all charges within six months after the sale; and that, in case the grantee has brought forward the settlement, only the necessary part, and no more, be sold for the above purpose. By an amendatory act passed on Jan. 26, 1739,<sup>115</sup> the committee appointed for the purpose by the proprietors was empowered to carry out the sale after twenty days notice in the Boston Gazette. In order to corroborate the contents of these acts, the proprietary power of taxation was defined by the Act of Aug. 8, 1741.<sup>116</sup> It empowered the proprietors to raise taxes by the major vote according to their interest and the proprietors or the clerk to grant warrant for such taxes. They were also empowered to choose collectors and assessors under oath. Any proprietors aggrieved or over-rated, however, were granted the liberty

<sup>114</sup> *Mass. Acts and Resolves*, II: 941-942. On Nov. 9, 1731, another similar act was passed covering the non-resident proprietors of the older towns. Prosecution was to follow sixty days after assessment. *Ibid.*, II: 553, 616-617.

<sup>115</sup> *Ibid.*, II: 972-973.

<sup>116</sup> *Ibid.*, II: 1066.

“to apply to the justices of the general sessions of the peace . . . for relief.” Similar powers were given to the proprietors of new townships granted in 1765 by the Act of Feb. 27, 1768.<sup>117</sup>

Armed by these acts<sup>118</sup> the proprietors proceeded adroitly against the delinquent proprietors. The extent to which these delinquent proprietors colored the eighteenth century proprietries may be easily seen in the enormous number of newspaper advertisements and notices concerning the public auction of numerous delinquent lots in numerous townships.<sup>119</sup> Almost all these notices specified two things, namely, that the delinquents shall not be allowed to draw further lot in the division of land unless all the delinquent dues are paid and that their lands shall be sold at public auction according to the Province laws. A laborious enumeration of lots, thus labeled for public sale, appeared in almost all cases.<sup>120</sup> Following is a typical example of the warning against such delinquent proprietors:<sup>121</sup>

“Whereas the Proprietors of the new Township Granted to Jonathan Powers, and others, on the bank of North Yarmouth, have not comply'd with the terms in their Grant made them, nor with the votes passed by themselves in order for the fulfillment of those Terms—these are to notify all the Persons that were admitted Proprietors in sd Township [that they] within the space of Three Months, viz. by or between the 12 Day of Vovember next, comply with the Votes of the Proprietors, in raising Money for the Defray-

<sup>117</sup> *Ibid.*, IV: 990.

<sup>118</sup> Unfortunately I found no legislative cases in the other New England colonies. Each case was dealt with separately.

<sup>119</sup> For example, *The Boston News Letter* or *The Boston Post Boy*, *The Connecticut Courant* or *The New York Gazette* of the period are full of them.

<sup>120</sup> For example that of Narragansett No. 4. (*The Boston News Letter* for Nov. 17, 1744), or that of West Housac (*The Boston News Letter* for August 5, 1762).

<sup>121</sup> From *The Boston News Letter*, Oct. 4–11, 1739.

ing past Charges, and proceed in the settlement of said Township. And further, to assure all Delinquents, that on Representation of the clerk of the Proprietors, or their Committee of such as neglect or refuse to comply with the Votes of the said Proprietors and that have not fulfilled the conditions of their Grant that their Bonds will be put in Suit and the forfeiture of their Right declared in order to their being a new Granted by the General Court.

Boston, Aug. 8,

1739.

William Dudley  
Ebenezer Burrill  
John Wainwright  
John Hobte

Committee.''

Such procedure could be found in almost all the speculative grants of the eighteenth century.

Actual cases of forfeitures and auction sales of delinquent lots are also numerous. The proprietors' records of the Narragansett township No. 1 are full of such instances. In October, 1742, the proprietors' meeting authorized a sale of delinquents' land and a committee was chosen. The notices of the sale was posted in seven different towns and was to be concluded on Dec. 21, 1742. But "a considerable sum of money" was paid in and the sale was adjourned till February, 1743.<sup>122</sup> In 1748, however, numerous actual sales were made and recorded, while other sales followed quite often between 1752 and 1769.<sup>123</sup> At Warner, during the years 1764 and 1769, twenty three delinquent

<sup>122</sup> *Narragansett No. 1 Proprietors' Records*, 127, 127-128.

<sup>123</sup> *Ibid.*, 161, 253, 263, 266, 269, 275, etc. It is interesting to note the price of a lot as the sales were consummated in 1748: it ranged from £17 to £46-6 Old Tenor. *Ibid.*, 128. It was carefully specified that, if the buyer fail to pay for the land, then the land was to be forfeited without further action. *Ibid.*, 130. At Greenock, Conn., the delinquent lots were auctioned off in 1762 at prices varying from £11 to £25. *Hartwood Proprietors' Records, Mss.*, 15, 21, 24.



rights were sold at an average of fifteen dollars a right.<sup>124</sup> Becket and Adams, Mass., and Gorham, Me., are other notable examples of similar actions.<sup>125</sup> When the delinquent proprietors paid their proportion of taxes or other charges, the right or lot sold could be recovered.<sup>126</sup>

Even after the passage of the several acts by the Court and while drastic measures were being actually applied to the delinquent members by some of the proprietors, in many cases petitions were sent to the General Court for its further action upon them. Here again one typical example may be cited. In 1748 the proprietors of Berford petitioned the General Court to be empowered to sell land belonging to the delinquent proprietors which, they claimed, "has retarded the Settlement of the said Plantation." The Massachusetts General Court, on June 7, 1748, ordered that the delinquent proprietors be notified by the insertion of the substance of the petition in a Boston newspaper for three weeks so that they may complain, if there is cause, in the Court. "No objection being made" the Court granted the petition and empowered a committee of three to sell the land in the township. This deed, the Court declared, "shall be good and valid to all Intent and Purposes in the Law, to the respective Grantees, their heirs and assigns forever."<sup>127</sup>

<sup>124</sup> Harriman, *History of Warner*, 141. Also, 121-122, 133.

<sup>125</sup> *The Boston Post Boy*, August 5 and 12, 1762.

<sup>126</sup> A typical example is that of William Brown, a proprietor of Union, Conn. Because of his delinquency, 2,240 acres of his lands were forfeited on that account.

<sup>127</sup> *Mass. Acts and Resolves*, XIV: 148, 180. Another good example is that of Narragansett No. 2. See *Ibid.*, XIV: 392-393.

## CHAPTER VIII

### THE REVIVAL OF THE ANCIENT PATENTS

#### I. THE GREAT PROPRIETORS AND THE EASTERN CLAIMS

The sphere of land speculation in the eighteenth century was not limited to the land grants of that century and the town proprietors; it also extended to the dormant rights of the ancient patentees and even affected the Western claims of Connecticut. Already we have noted the distinction between the town proprietors and the ancient patentees or the Great Proprietors. The chief importance of the latter in this study is not in their institutional character but in the speculative nature of their activities as illustrative of the extent to which the spirit of land speculation penetrated in the eighteenth century.

During its short life between 1620 and 1635, the Council for New England issued over two dozen land patents embracing the whole of the Maine seaboard as far as the River Penobscot.<sup>1</sup> These ancient patents remained merely paper patents for nearly a century and passed from one person to another as if they were letters of credit. However, the influences which affected the colonial land grants and the town proprietors also affected these dormant rights. The Great Proprietors, mostly descendants or purchasers of original rights or combination of both, awoke, under the spell of the speculative mania of the time, to find their dormant claims still legal and valid. One after another

<sup>1</sup> See Haven, *Grants under the Great Council for New England*, in *Lowell Institute Lectures*, Chapter IV.

the larger patents were revived and the territory along the Maine coast became a most prolonged battle ground of confusing land titles and speculative activities. We shall examine their history, activities, and controversies in the following pages.

Besides these Great Proprietors, it may be added here, other smaller private claims were also revived under a similar stimulus. Of these the more noteworthy ones are the Sterling claims,<sup>2</sup> the Edgecombe claims,<sup>3</sup> the Harvard College claims,<sup>4</sup> the Drowne claims,<sup>5</sup> the Clarke and Lake

<sup>2</sup> The title was derived from Lord Stirling to whom was granted in 1635 the Sagadonock territory by the Council for New England. Earle of Stirling, a direct descendant, revived the claim in 1768 by a proclamation and printed advertisements in the newspapers of the day to sell 1,000 acres for £100 each on the condition of actual settlement. The land was to be forfeited if the conditions were not fulfilled, but the consideration money was to be returned with 5% interest. Nothing, of course, resulted from these claims and advertisements. The proclamation was dated July 20, 1768. Massachusetts Archives, Towns, *Mss.*, CXVIII: 378-379, 380-381, 382-383.

<sup>3</sup> Sir Ferdinando Gorges granted to Sir Richard Edgecombe two tracts of land in July, 1637. The claim was revived in 1767 for 8,000 acres of these lands by Lord Edgecombe of the time through his agent, Sir William Pepperell. The claim was filed at the meeting of the Pejepscot Proprietors, within whose jurisdiction the territory lies, but nothing came out of it. Records of the Pejepscot Proprietors, *Mss.* (hereafter cited as Pejepscot Proprietors' Records, *Mss.*), V: 1-61, particularly 51-54.

<sup>4</sup> In 1682, 1,000 acres was granted to Harvard College. This grant was revived in 1730 by the President and Fellows of Harvard College and located at Casco Bay. The Pejepscot Proprietors objected and several law suits followed. After a prolonged discussion, the verdict was given in 1737 to the Pejepscot Proprietors by reason of their prior claim of twenty-three years. The claim was then dropped. Pejepscot Proprietors' Records, *Mss.*, V: 225-302.

<sup>5</sup> The Drowne Claim was based on the grant by the Council for New England to Robert Alsworth and Giles Elbridge in 1631. Shem



claims in the Kennebec Purchase Proprietors' territory,<sup>6</sup> and other minor claims.<sup>7</sup> These are primarily speculative moves and are remembered only in connection with numerous lawsuits in the eighteenth century. The Board of Trade indeed was right in thinking, as early as 1697, that "the revival of all dormant titles under the grants of the Council

Drowne, the clerk and most active member of the Pemaquid Proprietors, revived the claim and took possession of the land in 1735 through his wife who was the descendant of Nicholas Davison upon whom the whole patent fell in 1657. It witnessed a long series of law suits and controversies and finally upheld by the Commissioners appointed in 1811 to settle the eastern claims. The award, however, was only half a township. *Report of the Commissioners to investigate the Causes of the Difficulties in the County of Lincoln, with the Documents in support thereof* (hereafter cited as *Report of the Commissioners of 1811*), 7-11.

<sup>6</sup> These were based upon Indian purchases but obtained the verdict in their favor in 1758. See Gardiner, *History of the Kennebec Purchase, or the Proceedings under the Grant to the Colony of Plymouth of the Lands on the Kennebec* (hereafter cited as Gardiner, *History of Kennebec Purchase*), in Maine Historical Society, *Collections*, II: 148.

<sup>7</sup> Such, for example, were the Tappan, the Brown, and the Vaughen claims, all of which were derived from Indian purchases, and ruled by the Commissioners of 1811 as invalid. *Report of the Commissioners of 1811*, 13-15 and 82-85; 16 and 86-103; 106-109ff. Johnston, *History of Bristol*, 475-477, 488-496.

The Hamilton Patent was the one which was revived toward the close of the seventeenth century, but in vain. It was based upon the grant from the Council for New England, April 22, 1635, to James, Marquis of Hamilton. After the Restoration, his daughter, Anne, and her husband, William, Marquis of Douglas, who was created Duke of Hamilton in 1660, revived the claim. The final petition was made by James Douglas, their son, but the case was decided in 1697 in favor of Connecticut. The territory in question was from the mouth of the Connecticut River to the Narragansett Bay, extending 60 miles back into the country. Johnston, *History of Connecticut*, 215-216; Bond, *op. cit.*, 41, foot note by C. M. Andrews.

of Plymouth would lead to unspeakable disturbances and confusion.”<sup>8</sup>

#### THE MASONIAN PROPRIETORS

The history of the Masonian Proprietors is one of confusion and entanglement. Captain John Mason was one of the important adventurers of the seventeenth century, becoming a member of the Council for New England in June, 1632, and Vice-President in the following November. Because of his prestige and interest by far the largest amount of grants made by that Council, both in number and extent, was bestowed upon Mason, or to him and Sir Ferdinando Gorges jointly. These are:

(1) Mariana to Mason, March 9, 1621-2, comprising the territory between the Waumkeag and Merrimac Rivers, bounded on the west by a straight line connecting the sources of the two rivers.

(2) Province of Maine to Mason and Gorges, August 10, 1622, including the tract of land between the Merrimac and the Sagadahock rivers and extending sixty miles inland.

(3) New Hampshire to Mason, November 7, 1629, comprising the territory between the Merrimac and Piscataqua rivers and extending to the head of each and from the mouth of the Merrimac “forward up into y<sup>e</sup> land Westwards” until a distance of sixty miles from the sea had been reached on each course, and these limits to be connected with a line forming a westerly line.

(4) Laconia to Mason and Gorges, November 17, 1629, comprising an inland tract of land of very indefinite bounds.

(5) Piscataqua to Mason, Gorges, and seven other associates, November 3, 1631, conveying the settlement already begun on the Piscataqua and extending north to the Hilton

<sup>8</sup> Bond, *op. cit.*, 41, foot note.



Patent, with a considerable area to the south and west, very indefinitely and obscurely described.

On April 18, 1635, the Council gave a lease of New Hampshire and Masonia to John Wollaston, a London goldsmith and Mason's brother-in-law, for 3000 years in accordance with an agreement with Mason. The territory included "New Hampshire" extending from the Naumkeag to the Newichwannock rivers and sixty miles inland and "Masonia," a 10,000-acres tract at the mouth of the Sagadahock River. Four days later, on April 22, the same territories were granted to Mason in accordance with the agreement made on February 3rd of the same year. Wollaston transferred his lease to Mason on June 11th and Sir Ferdinando Gorges deeded his portion to Mason on September 17th.<sup>9</sup>

The royal charter, which was issued on August 19, 1635, soon after the Council surrendered its charter, granted all these territories to Mason who, with his heirs, were made "the true and absolute Lords and Proprietors" in free and common socage by fealty only and not in capite nor by knight service and paying "one Quarter of wheate" annually. Mason was given tremendous power, including the right of granting land and estates.<sup>10</sup>

After spending some 22,000 pounds in an enthusiastic but fruitless encouragement of settlements,<sup>11</sup> Capt. John Mason died late in 1635. By his will, dated Nov. 16, 1635, Mason devised his New Hampshire grant to his grandson,

<sup>9</sup> These patents, charters, and deeds are conveniently collected in *New Hampshire State Papers*, XXIX ("Town Charters" VI, Masonian, General): 19-69, 85-87. For a summary, see Hammond, *The Masonian Title and its Relation to New Hampshire and Massachusetts*, in American Antiquarian Society, *Proceedings*, New Series, XXVI: 245-247.

<sup>10</sup> *New Hampshire State Papers*, XXIX: 69-85.

<sup>11</sup> For the work of his agent, see Hammond, *op. cit.*, 248.



John Tufton, on condition that he should take the name of Mason. He died without issue and, according to the same will, Robert Tufton Mason became the heir to that vast territory. Robert Tufton, however, did not come of age until 1650, during which time the widow of John Mason was the administratrix but was not interested in the land at all.

Robert Tufton Mason died in New York in 1688, leaving two sons, John and Robert. These two heirs, not caring for the land, sold in 1691 the entire province of New Hampshire, together with Masonia, Mariana, Isle Mason, and Laconia, for £2,750 to Samuel Allen, a London merchant. Only £1,250 of the purchase price was ever paid and thus was started the long Allen claim.<sup>12</sup> Allen was commissioned Governor of New Hampshire and John Usher, his son-in-law, became Lieutenant-Governor. In 1701 Allen mortgaged one-half of the province to Usher for £1,500. Allen continued to clear the title and instituted many suits. The crown favored Allen, but the Assembly recognized his title only to the unsettled portion, while the Attorney-General advised the crown not to interfere with the lands in possession of the inhabitants, holding their title good by right of possession. Finally the Council and Assembly arranged a convention with Allen and the settlement of the trouble was practically made when Allen's death prevented any further conclusion. In 1705 Thomas Allen became heir to the territory and continued his fight for the title but died in 1715 without success and the Allen contest waned.<sup>13</sup>

<sup>12</sup> The deed is dated April 27, 1691. *New Hampshire State Papers*, XXIX: 148ff. Fry, *op. cit.*, 220-221.

<sup>13</sup> For a detailed study of Allen's struggle and controversies, see Fry, *op. cit.*, 220-232; Hammond, *op. cit.*, 252. The most famous of the suit instituted was that of Mason *vs.* Waldron which was started in 1683, continued as Allen *vs.* Waldron, and decided in 1707 for the defendant. It was appealed to the Superior Court.

It was, however, to be revived later. It may be added here that with it went the Hobby claim which was created by the sale of one-half of the Province to Sir Charles Hobby by Thomas Allen in 1706.<sup>14</sup>

John Tufton Mason died unmarried in Virginia, while Robert was lost at sea, leaving an only son, John who died in Havana in 1718. The latter, however, left three sons the eldest of whom grew up as John Tufton Mason. It may be noted at this point that, from the time when the first Mason died in 1635 down to 1738, very little was done, if at all, in the way of actual settlement. The history of his title was nothing but a history of controversies, both legal and political. After 1715, in particular, even the questions of both Allen's and Mason's title practically became dormant until John Tufton revived it in the thirties.

While the boundary disputes between Massachusetts and New Hampshire was still pending, John Tufton Mason revived his title in a memorial to Gov. Belcher of Massachusetts Province in June, 1738. The Massachusetts leaders investigated the Mason title with a view that it might possibly bear upon the boundary case, and, after being convinced of its validity, began to negotiate with him.<sup>15</sup> As a result, on July 1, 1738, Mason executed a deed to the Province of Massachusetts Bay through her agent, by which, in consideration of £500, he quit-claimed to the inhabitants and proprietors of Salisbury, Amesbury, Haverhill, Methuen, and Dracut all the lands contained in those respective towns, which were more than three miles north of the Merrimac River. The territory thus quit-claimed comprised 23,675 acres.<sup>16</sup> By agreement Mason was to go to London

<sup>14</sup> For the Hobby case, see Fry, *op. cit.*, 239-241.

<sup>15</sup> An opinion was obtained from two leading lawyers of Boston who maintained that the Mason title was still valid. This was in June, 1738. *New Hampshire State Papers*, XXIX: 178-181.

<sup>16</sup> The deed is in *New Hampshire State Papers*, XXIX: 189-193.



at the expense of Massachusetts and exert his influence to establish the line as agreed. Soon after Mason's arrival at London, however, Francis Wilkes, a Massachusetts agent, following the opinion of the King's Solicitor not to press the scheme, caused Mason's dismissal as agent.

Hearing of this unfortunate affair, John Thomlinson, the New Hampshire agent in the boundary case, persuaded Mason to release his interest to New Hampshire and on April 6, 1739, a tripartite agreement was executed, wherein Mason agreed, in consideration of the payment of £1,000 New England currency within two months after New Hampshire should be declared a distinct and separate government, to convey all his interests in the province of New Hampshire to the said government and the other inhabitants then in possession of land in that province upon condition that in all future land grants within that territory Mason should have a share equal in proportion to that of any other grantee.<sup>17</sup> The matter remained in this position for several years.

The boundary controversy was settled, the new boundary was established in 1740-1, and in December, 1741, Benning Wentworth was commissioned Governor of the now separate Province of New Hampshire. But the new government failed to come to a decision in accepting Mason's deed according to the tripartite agreement<sup>18</sup> and a syndicate was

<sup>17</sup> (1) Mason; (2) John Rindge, Theodore Atkinson, Andrew Wiggin, George Jeffrey, and Benning Wentworth; and (3) Thomlinson. The deed is in New Hampshire State Papers, XXIX: 193-196. Of the party of the second part, Wiggin was the Speaker of the Assembly and the remainder were all members of the Council.

<sup>18</sup> Principally due to the hostility of the Council. A brief story of the struggle is in Fry, *op. cit.*, 302ff. It is to be seen that this was natural because all the members except one of the tripartite agreement on the second part were members of the Council and they themselves wanted to buy the title from Mason.



formed to negotiate the purchase of title from Mason. Accordingly, on July 30, 1746, Mason deeded his portion of the Province for £1,500 to twelve men.<sup>19</sup> On the following day the new proprietors quit-claimed to the inhabitants all their rights over the land contained within the original towns as well as that embraced within the limits of all the other towns, that had ever been granted by the government of New Hampshire.<sup>20</sup>

Immediately upon the execution of the deed, severe criticism arose in the Assembly and the purchasers were accused of taking a bargain out of the Government's hands. An endeavor, extending over two years, to accomplish peaceful agreement between the Council and the Assembly on the one hand and the purchasers on the other ended without result.<sup>21</sup> On May 12, 1748, the Masonian Proprietors issued a notification for a meeting of the Propriety on the 14th for the purpose of organization and transaction of such other business as might be thought proper. They met on the appointed day and, after choosing a moderator and a clerk, agreed that any eight of the proprietors should have a power to call a meeting at any time except when one was under adjournment.<sup>22</sup> At an adjourned meeting a committee was appointed to procure such papers and records as might be judged necessary to support and maintain their title and agents were selected to prosecute any trespassers

<sup>19</sup> The deed is in *New Hampshire State Papers*, XXIX: 213-215, 253-263.

<sup>20</sup> *Ibid.*, 216-217. The towns named were: Portsmouth, Exeter, Dover, Hampton, Gosport, Kingston, Derry, Chester, Nottingham, Barrington, Rochester, Canterbury, Bow, Chichester, Epson, and Barnstead—16 in all. Gilmanton and Kingswon alone were excepted, the reason being that the proprietors did not believe any improvement had been made within the limits. *Ibid.*, 257.

<sup>21</sup> See Fry, *op. cit.*, 305ff.

<sup>22</sup> *New Hampshire State Papers*, XXIX: 403-404.

upon their land. In the meanwhile petitions for land began to come in thickly and the Masonian Proprietors, in the autumn of 1748, began to grant land, thus venturing into the field of speculation.

The Masonian Propriety thus organized was divided into fifteen equal shares. These were originally held by twelve most influential men of the time: Theodore Atkinson three shares; Mark Hunking Wentworth two; Ricjard Wibrig, John Wentworth, George Jaffrey, Nathaniel Meserve, Thomas Pasker, Thomas Wallingford, Jotham Odiorne, Joshua Peirce, Samuel Moore, and John Moffat. Mark Hunking Wentworth sold one of his two shares to John Rindge, June 2, 1750; Theodore Atkinson sold two of his three to John Tufton Mason, August 1, 1746; Mason sold one of his two in equal interest to Samuel Solly and Clement March, May 26, 1749, while he sold the one-half of his remaining share to John Thomlinson, June 9, 1749. On various dates Nathaniel Meserve sold fractional parts of his interest to Joseph Blanchard, Joseph Green, and Paul March. Col. Samuel Moore having died, his share was held by his widow, Mary Moore, and her brother, Daniel Peirce. It is an amazing fact that all of these Proprietors, except four, were relatives, while seven of them were active members of the Council.<sup>23</sup> Mark Hunking Wentworth, the father of later Gov. John Wentworth and a member of the Governor's Council from 1759 to 1775, and John Wentworth were sons of Lieutenant-Governor John Wentworth and brother of Gov. Benning Wentworth, while Theodore Atkinson was the latter's brother-in-law. They were all men of considerable influence and ability, successful in

<sup>23</sup> The whole relationship is worked out in *New Hampshire State Papers*, XXVIII: vi-vii. Those four were Moffat, Wallingford, Mason, and Thomlinson. The interest in the Propriety acquired by Mason and Thomlinson was the natural consequence of their earlier connection with the patent.



business, conservative in temperament, and considerate in their dealings with the people.<sup>24</sup>

The territory over which they claimed jurisdiction was still very vague in many respects and caused much controversies in the later years. The western boundary was run in 1751, with the consent of the Government of New Hampshire, and was as follows: beginning at a point on the southern boundary of the Province, at the southwest of Monadnock No. 4, it ran north along the western boundary of that town and four others that had been previously laid out by the Propriety, then cut through Lake Sunapee and was continued until Baker's Pond (Newfound Lake) was reached. This was a curved line, as the Proprietors contended that no other line could be drawn which could preserve a uniform distance of sixty miles from the sea as described in the grant to Mason.<sup>25</sup> In 1768 the line was run from the northeasterly boundary of the Province to the Pemigewasset River and in 1769 the Proprietors ordered it to be continued from that point to the southwestern boundary of their grant, bordering on Massachusetts.<sup>26</sup> The whole question, however, was not successfully settled until after the Revolution, when in 1788 a final agreement was reached between the Masonian Proprietors and the New Hampshire Government.<sup>27</sup>

<sup>24</sup> Fry, *op. cit.*, 311.

<sup>25</sup> Fry, *op. cit.*, 313; *New Hampshire State Papers*, XXIX: 30, 65, 309, 381, 438, 444.

<sup>26</sup> *New Hampshire State Papers*, XXIX: 308. Map on 306.

<sup>27</sup> Fry, *op. cit.*, 317ff. After much controversy, a committee was appointed in 1787 and in June, 1788, an agreement was reached whereby the State released to the Masonian Proprietors all its rights and titles to the lands between the straight and curved lines which the Proprietors still claimed in consideration of the payment of \$800 with interest within a year and \$40,000 in State notes within four years. See *New Hampshire State Papers*, XXIX: 340, 342, 601-606, 654. Map is on the page 338.



The Masonian Proprietors were organized as any other propriety of the period and enjoyed the privilege of a corporate body. Their chief duty related to the land grants which will be treated elsewhere. Notwithstanding the occasional appearance of the ghost of the old Allen claim, the Masonian Proprietors successfully maintained their title against all comers without any very serious disturbance for some forty years,<sup>28</sup> during which time they disposed of the greater part of their holdings. They held regular meetings until 1846, when the records disappear.<sup>29</sup>

#### THE KENNEBEC PURCHASE PROPRIETORS

The Kennebec Proprietors traced their claims back to a grant made by the Council for New England and several Indian deeds. On Jan. 13, 1629-30, the Council for New England made a grant to William Bradford and his Pilgrim associates "of all that Tract of land or part of New England in America . . . which lyeth within or betweene and Extendeth itSelf from the utmost of Cobesscont . . . Which adjoyneth to the River Kenibeck towards the Western Ocean and a place called the falls of Nequamkick in America . . . and the Space of ffifteen English milles on Each Side of the said Riuer called Kennebeck."<sup>30</sup> In 1640, Bradford and his associates surrendered this grant on the Kennebec River to all the freemen of the

<sup>28</sup> The Allen claim was revived in the eighties and finally settled in 1790. *New Hampshire State Papers*, XVIII: 767, 768, 769; XXIX: 281-288, 313-334, 335ff. The final deed of Allen's heirs to the Proprietors was dated Jan. 28, 1790. *Ibid.*, XXIX: 345-350.

<sup>29</sup> The records of the Masonian Proprietors' meetings are printed in *New Hampshire State Papers*, XXIX: 401-644.

<sup>30</sup> The deed is in *Documentary History of Maine*, VII (*Farnham Papers*): 108-116.

Colony of New Plymouth.<sup>31</sup> In 1648 and 1653 the Colony obtained from the Indians the deeds of land extending from Cushnec, now Augusta, to Wesserunkike or Wesserunsett, where the northern limit of the patent was finally fixed and which is a stream emptying into the Kennebec, a short distance below the village of Norridgewok.<sup>32</sup> On June 6, 1660, the Plymouth Colony voted to sell the patent for £500 and next year sold the whole right to the patent to Antipas Boies, Edward Tyng, Thomas Brattle, and John Winthrop for a sum of £400 sterling. The additional Indian purchases were also included in the transaction. From that date until the middle of the next century the whole patent lay perfectly dormant and nothing was heard of it.

The demands for lands and the speculative movement of the time at last aroused the descendants of the purchasers in 1749. A warrant was issued upon petition and in September nine persons met to organize a Propriety.<sup>33</sup> In December they appointed a committee to take charge of the affairs of the Propriety, moved to admit new proprietors, and voted to grant a township on "Commeseconte," offering a bounty of 200 acres to each settler.<sup>34</sup> During the following three years they kept admitting new members, granted lands for settlements, offered inducements and settled Germans on their territory, took up the defense of the settlers, and started the campaign to clear their title from all other encroachments.<sup>35</sup> But it was not till 1753 that they were finally constituted a legally organized

<sup>31</sup> The deed is dated March 2, 1649-41. *Ibid.*, 256-259.

<sup>32</sup> Gardiner, *History of Kennebec Purchase*, 275.

<sup>33</sup> Records of Proprietors of the Kennebec Purchase, 1749-1822, *Mss.* (hereafter cited as Kennebec Proprietors' Records, *Mss.*), I: 1-2, 3, 4.

<sup>34</sup> *Ibid.*, I: 6.

<sup>35</sup> *Ibid.*, I: 48, 50, 54, 58, 72, 91, 102-103, etc. A brief narrative is in North, *History of Augusta*, 31ff., quoting proprietors' records.

Propriety. In June of that year, taking advantage of a Massachusetts law lately enacted, the Proprietors met and legally organized "The Proprietors of the Kennebec Purchase from the late Colony of New Plymouth." All descendants of the four purchasers were urged to join the organization and in December they made a list of thirty-three names as the original Proprietors of the Kennebec Purchase, known also as the Plymouth Company. Of these Proprietors the more influential and large shareholders were William Brattle, Robert Temple, Jacob Wendell, Sylvester Gardiner, Charles Apthorp, Florentius Vassal, Thomas Hancock, Edward Tyng, William Bowdoin, Samuel Goodwin, Benjamin Hallow and William Johnson.<sup>36</sup>

The Kennebec Purchase Proprietors were the most powerful of the Great Proprietors of the period and from 1752 onward they vigorously pushed the interest of the Company in settling the territory which they claimed. Not only did the Company grant townships and land freely, but they also spent large sums of money and offered inducements to the settlers, even provisions and defense; they built two forts on the Kennebec River and thereby helped the problem of the Province defense; before 1766 they successfully carried through four controversies against different claimants upon their territory, not to mention numerous other smaller law suits in which they became involved.<sup>37</sup> As an

<sup>36</sup> The others who were active in the Company's affairs were James Pitts, James Bowdoin, Belcher Noyes, Gershom Flagg, and David Jeffries. Kennebec Purchase Proprietors' Records, *Mss.*, II, *passim*. North, *op. cit.*, 285ff. The Company was divided into 192 shares and the above named proprietors held more than seven each. The manner in which these thirty-three descended from the original four purchasers is carefully traced in North, *op. cit.*, 282-285. Biographies are given, *ibid.*, 186ff.

<sup>37</sup> These respective subjects are covered in detail elsewhere at proper places.



evidence of vigorous measures adopted by the Company, it may be mentioned that, in the eleven years during which Dr. Sylvester Gardiner managed the Company's concerns, £5,000 were assessed on the shares of the Company, all of which were expended in promoting the prosperity of the patent.<sup>38</sup> By the end of the French and Indian War, they had successfully caused to be settled no less than eleven townships, some of them flourishing towns.<sup>39</sup>

The meetings of the Company continued regularly from 1749 until they were finally closed in 1822.

#### THE PEJEPSCOT PROPRIETORS

The history of the Pejepscot Proprietors dates back to 1632 when the Council for England granted a patent to Thomas Purchase and George Way. The grant included the territory at Pejepscot, on both sides of the Androscogin River.<sup>40</sup> A portion of this grant reverted to the Government of the Massachusetts Bay in 1639<sup>41</sup> and the titles were obtained through a series of Indian purchases. Between the years 1669 and 1676 several small purchases were made of the Indians by Thomas Gyles, James Gyles, John Thomas, and Samuel Yoke as partners.<sup>42</sup> In 1675 Thomas Purchase acquired an additional territory by an Indian purchase, as also did Thomas Stevens. Stevens sold his part in 1676 to Lancelot Pierce, upon which transaction William Pierce claimed his right in the patent in 1715. Nicholas Shapleigh made another purchase from the Indians about 1659 while Nicholas Cole and John Purrington purchased

<sup>38</sup> See Gardiner, *op. cit.*, II: 279.

<sup>39</sup> *The Massachusetts Gazette and Boston News-Letter*, June 6, 1763.

<sup>40</sup> *Documentary History of Maine VII (Farnham Papers):* 177-178.

<sup>41</sup> *Ibid.*, VII: 243-244.

<sup>42</sup> Maine Historical Society, *Collections*, XXIV: 386.

several other tracts in 1672. This is quite characteristic of the period; every one purchased freely from the Indians, the deeds of which were generally vague and proved to be the invariable source of many a boundary dispute in the next century.

In 1683 Richard Wharton purchased all these titles in rapid succession: Shapleigh sold his share first on July 4th; the Way share with Purchase in the original patent was disposed of on October 10th for £100; while the administratrix of Thomas Purchase sold the latter's right to an Indian purchase fifteen days later. These purchases were confirmed by the English Government and the territory comprised the whole of what is now the township of Harpswell, the greater portion of Brunswick, and a tract on the river in what is now Topsham.<sup>43</sup> To this tract Wharton added, in 1684, another large tract through purchases from six Indian chiefs.<sup>44</sup> Before he could do anything with the territory he had thus acquired, Wharton died in England without issue in 1693 and Ephraim Savage of Boston became the administrator. Four years later the superior court at Boston authorized the latter to sell the same.<sup>45</sup> All this time there was nothing but confusion from the several ambiguous purchases and grants. Nothing was done and the title slept in silence.

These dormant titles were revived in 1714 just at the time when the conclusion of the peace of Utrecht opened up a new period of expansion toward the frontiers. On the 5th of November of that year, Savage sold the whole

<sup>43</sup> Pejepscot Proprietors' Records, *Mss.*, I: 1-4, 5-7, 7-11; Maine Historical Society, *Collections*, XXIV: 200-204, 204-207, 207-211; III: 325-328.

<sup>44</sup> Pejepscot Proprietors' Records, *Mss.*, I: 11-14; Maine Historical Society, *Collections*, XXIV: 211-217.

<sup>45</sup> Pejepscot Proprietors' Records, *Mss.*, I: 16-17; Maine Historical Society, *Collections*, XXIV: 217-218.

of the above mentioned tract with patent and deeds for £140 to Thomas Hutchinson, Adam Winthrop, John Watts, David Jeffries, Stephen Minot, Oliver Noyes, and John Ruck of Boston and John Wentworth of Portland.<sup>46</sup> These eight merchants then met and organized the original Company of Pejepscot Proprietors. The Wharton heirs quit-claimed their rights in February, 1715, in return for which the Proprietors granted them several tracts of land,<sup>47</sup> while during the following year, 1716, several claimants of the territory also deeded their rights to the Proprietors.<sup>48</sup> The Massachusetts General Court confirmed the purchase in 1715,<sup>49</sup> thus giving the Propriety a legal start.

The course of the Pejepscot Proprietors, thus inaugurated,<sup>50</sup> was not an uneventful one. They had, however, contributed much to the settlement of the eastern country by building forts, by offering lands and inducements to settlers, and by bringing in Scotch-Irish immigrants. But on the other hand their life was an uphill fight. Their claims were based mainly upon several confusing purchases from the Indians and one contest after another was in store for them, many ending in law suits which were bitterly contested. Particularly strenuous was the controversy with the more powerful Kennebec Purchase Proprietors,

<sup>46</sup> Pejepscot Proprietors' Records, *Mss.*, I: 17-24; Maine Historical Society, *Collections*, XXIV: 218-227, 231-233.

<sup>47</sup> Pejepscot Proprietors' Records, *Mss.*, I: 29-32, 33, 34.

<sup>48</sup> *Ibid.*, I: 59-66, 71-76, 76-78, 78, 84, 86, etc.

<sup>49</sup> *Ibid.*, I: 34-37. Wheeler, *History of Brunswick, Topsham, and Harpswell*, 234ff.

<sup>50</sup> The first legal meeting, however, was not held until June 1, 1757, when they voted "That all Matters and things transacted by the Proprietors at their past Meetings be & hereby are ratified & confirmed." Pejepscot Proprietors' Records, *Mss.*, I: 185-186. The future meeting was to be called by the standing committee of their appointment upon 21 days notice in Boston papers. Pejepscot Proprietors' Records, *Mss.*, for June 7, 1758.



which controversy only ended in a disastrous compromise.<sup>51</sup>

It is important to note that their existence was chiefly speculative and as such they accomplished their end by dividing the lands among themselves and selling them at profit.<sup>52</sup> Naturally the shareholders kept changing and by 1737 there were thirteen Proprietors of whom only two were original members while the others were either the heirs or the purchasers of the rights.<sup>53</sup> By 1743, only six years later, another change was evident. In that year there were thirteen Proprietors, but only three of them were original members and the rest were new. Benning Wentworth, the coming Governor of New Hampshire, and Thomas Westbrook, a speculator of Portsmouth and a proprietor of no less than ten New Hampshire townships granted by Gov. Wentworth, appear on the role of the Proprietors, the former holding one-eighth of the Company's share and the latter one-twenty-fourth. Moreover three members, namely, Adam Winthrop who held one-eighth, Oliver Noyes who held one-twenty-fourth, and Thomas Westbrook, were the leading members of the Lincolnshire Company and Twenty Associates.<sup>54</sup> Nothing except the spirit of speculation can explain these changes in so short a period and the duplication of memberships among the two leading proprietries.

The Company lasted until the early part of the nine-

<sup>51</sup> These subjects are treated elsewhere.

<sup>52</sup> For example, Pejepscot Proprietors' Records, *Mss.*, I: 70-71, 84-85, 96-97, 99, 127ff., etc.

<sup>53</sup> Pejepscot Proprietors' Records, *Mss.*, I: 123.

<sup>54</sup> The division of shares in 1743 is interesting: Adam Winthrop, 1/8; Oliver Noyes, 1/24; and John Watts, 1/36 were of the original proprietors. The others were: Benning Wentworth, 1/8; Job Lewis, 1/8; Hanna Fayrweather, 1/8; Isaac Royal, 5/24; Joseph Wadsworth, 1/24; Henry Gibbs, 1/24; Belcher Noyes, 1/24; William Skinner, 1/36; Lydia Skinner, 1/36; Thomas Westbrook, 1/24. *Ibid.*, I: 123.

teenth century. In 1817 the Proprietors sold at auction five townships and completed the work of the Company.<sup>55</sup> The next year, on June 5th, they met for the last time and disbanded.<sup>56</sup>

#### THE LINCOLNSHIRE COMPANY PROPRIETORS

The Lincolnshire Company Proprietors, otherwise known as the Waldo Patentees or Muscongus Proprietors, had their origin in a grant of territory made by the Council for New England on March 13, 1630, to John Beauchamp of London and Thomas Leverett of Boston in Lincolnshire, England. It comprised a large territory between the Muscongus and Penobscot Rivers.<sup>57</sup> When Beauchamp died, the whole patent devolved upon Leverett who left it to his heirs in 1650. The patent then passed to Gov. John Leverett as a lineal descendant and in 1714 to President John Leverett of Harvard College, a great grandson of the original patentee. All this time the patent was dormant as in other cases already mentioned and no improvement whatsoever was planned.

In 1719 Pres. Leverett, in view of the value of the territory therein contained, took measures to revive and resettle the patent. He accordingly parcelled the whole grant into ten equal shares and admitted other direct and lineal descendants of Thomas Leverett in a land company known as "The Lincolnshire Company and Ten Associates." John Leverett and Elisha Cook both reserved two shares each, while John Bradford, Spencer Phips, Nathaniel Hubbard,

<sup>55</sup> Those townships were Lisbon, Durham, Green, Lewiston, and Leeds, all in Maine. *Ibid.*, II: 107.

<sup>56</sup> *Ibid.*, II: 106.

<sup>57</sup> The deed is in *Documentary History of Maine*, VII (*Farnham Papers*): 125-128.

and Leverett's three daughters held one each.<sup>58</sup> These were the original "Ten Associates" and they, on August 15, 1719, admitted twenty associates and formed "The Muscongus or Lincolnshire Company and the Twenty Associates." These proprietors were all Bostonians except four who lived in Portsmouth, N. H., Hingham and Salem, Mass., and Newport, R. I. Each held one-thirtieth part of the Company's interest except four who shared two rights.<sup>59</sup> It was agreed at the outset that each Proprietor should have equal right according to the shares held and that the major votes should determine the general policy of the Company.<sup>60</sup> From that date on the shares kept changing hands by inheritance and purchase and by 1767 there were no less than sixty-five Proprietors, each holding a fractional part of a share.<sup>61</sup>

Capt. Samuel Waldo, while in England as an agent in the proceeding against David Dunbar, also served the interest of the Lincolnshire Company. This was due to Dunbar's aggression upon Lincolnshire Company's land, his extortions becoming so disastrous to the interest of the Proprietors. Upon revocation of Dunbar's authority and securing of the confirmation of their patent, Waldo was given as reward one-half of the whole patent.<sup>62</sup> In 1734 the patent was divided and Samuel Waldo bought 100,000 acres in addition, while 200,000 acres still remained with

<sup>58</sup> The deed is dated August 14, 1719. Records of the Lincolnshire Company and the Twenty Associates, 1766-1794, *Mss.* (hereafter cited as Lincolnshire Company Records, *Mss.*), 8-10. Elisha Cook was a son of Elizabeth, a daughter of John Leverett; Hubbard married the second daughter of Leverett; Bradford was the son of William Leverett.

<sup>59</sup> Lincolnshire Company Records, *Mss.*, 11-13.

<sup>60</sup> The agreement is dated September 1, 1719. *Ibid.*, 26-30.

<sup>61</sup> *Ibid.*, 33-35.

<sup>62</sup> Warren, *History of Belfast*, I: 41.



the other Proprietors of the Company.<sup>63</sup> Waldo thus became a dominating figure in the Company, owning nearly two-thirds of the whole interest. The Company thus became commonly known as the Waldo Patentees. Waldo's activities in connection with the Company, which will be noted elsewhere, were remarkable, particularly in inducing foreign immigrants to settle upon the Muscongus territory.

When Samuel Waldo died in 1759, his shares in the Company descended to his four children. These shares were then bought up by Thomas Flucker with whom one of Waldo's daughters married. The affairs of the Lincolnshire Company, in the meanwhile were managed by the standing committee but the Company became very feeble after Waldo's death.<sup>64</sup> Delinquencies increased and the shares began to be sold out in order to meet the expense of the Company.<sup>65</sup> Upon the outbreak of the Revolutionary War, however, the whole territory became forfeited on the ground of being Tory property. When the war was over Gen. Henry Knox, to whom Lucy Flucker married, bought four-fifths of the whole patent, while the remainder was the property of his wife by right of inheritance. Thus the interest of the Company gradually dwindled down until 1804 when the last of the unsold land was disposed of and the activities of the Company were closed.<sup>66</sup>

<sup>63</sup> Lincolnshire Company Records, *Mss.*, 53. In 1768 final survey was made and in 1773, 100,000 acres were set off to the "Ten Associates" and another 100,000 acres to the "Twenty Associates." *Ibid.*, 53-54-55, 57, 59, 68.

<sup>64</sup> *Ibid.*, 33-35, 38-39, 79, 81, 85-86.

<sup>65</sup> For example, in 1768, one share was sold for £920 O. T. to defray the Company's expenses in the face of delinquencies. *Ibid.*, 80-81, 85, 86-89.

<sup>66</sup> Miller, *History of Waldoboro, Maine*, 8; Maine Historical Society, *Collections*, IX: 227ff; Williamson, *History of Belfast*, I: 45-46. Henry Knox bought two-fifths for \$5,200 in 1792 and another two-fifths in 1793.

## THE PEMAQUID PROPRIETORS

The Pemaquid Proprietors also traced their origin back to a grant of the Council for New England, made on Feb. 29, 1631-2, to Robert Aldworth and Giles Elbridge.<sup>67</sup> The territory comprised some 12,000 acres of land at Pemaquid, very vague in its boundary. As in the other cases the patent was split and sold from one person to another. All these sales, however, were brought together into one hand by Nicholas Davison between 1653 and 1657 and he became the practical owner of the whole patent.<sup>68</sup> When Davison died, he left by his will the whole of his shares in three equal parts to his wife, son, and daughter. In this condition the patent remained dormant, as in other cases, until the first half of the following century.<sup>69</sup>

The territory of the Pemaquid patent was very small when compared with the other dormant patents of similar origin. But, in the face of land hunger and the speculative spirit of the time, great value was attached to it. Accordingly the heirs of Nicholas Davison revived the claims in 1735 and appointed Shem Drowne their attorney to investigate their title and to organize them into a Propriety. The organization was not consummated, however, until 1743. On August 31 of that year, the first meeting was called but only six claimants appeared and after three ineffective attempts at adjourned meetings, the Proprietors finally met

<sup>67</sup> The deed is in *Documentary History of Maine*, VII (*Farnham Papers*): 165-172.

<sup>68</sup> In 1651, Thomas Elbridge sold one-half of his share to Paul White, the latter selling it again to Richard Russel and Nicholas Davison in 1653. In 1657 Richard Russel sold his quarter share to Davison, while Thomas Elbridge sold his half to the same person during the same year. *Maine Historical Society, Collections*, V: 207-214.

<sup>69</sup> The story of these titles is given in the *Report of the Commissioners of 1811*, 33-54.



on November 15th and legally organized themselves as the "Pemaquid Proprietors."<sup>70</sup> There were twenty-one Proprietors in all and the shares were divided into ninety. Of these Habijah Savage with thirty shares, Shem Drowne with twenty-three, and George Craddock and Adam Winthrop with five shares each were the largest shareholders.<sup>71</sup> Shem Drowne was elected clerk and entrusted with the plan of 9,000 acres for the first division, which division was made on December 5th, showing how eager were the Proprietors to get land for themselves.<sup>72</sup> Before March 6, 1744, two other divisions were consummated and the greater portion of the territory was divided up among themselves.<sup>73</sup>

The activity of the Propriety was small when compared with those of the other Great Proprietors, particularly with reference to the settlement of the territory. This was due partly to the early division of the territory among the individual Proprietors as noted above and partly to the

<sup>70</sup> Pemaquid Proprietors' Book of Records, 1743-1774, *Mss.* (hereafter cited as Pemaquid Proprietors' Records, *Mss.*), I: 1-2. The adjourned meetings were held on September 22, October 20, and November 1.

<sup>71</sup> The others were: 2½ shares each—John Alford and Joshua Winslow, Sarah Sweetzer, John Phillips, Joanna Phillips, Benjamin Stevens, Ezekiel Chever; 2 shares each—Lonas Clark, Samuel Clark, John Chandler; 1 share each—Thomas Ruck, Joseph Fitch, John Kneeland, Anderson Phillips, Henry Phillips, Timothy Parrot; Abigail Tilden, and Christopher Tilden held one share jointly.

It is to be noted that Adam Winthrop was a member of two other Proprieties, namely, the Lincolnshire Company and the Pejepscot Company.

<sup>72</sup> Dec. 5, 1743. Pemaquid Proprietors' Records, *Mss.*, I: 4-5. Ninety 100 acres lots were drawn. Savage drew twenty-nine lots and Drowne twenty-two. Already a new name appeared in the person of Lydia who drew fifteen lots. Evidently many of the proprietors ventured speculation and sold out since November 15th.

<sup>73</sup> The second division was made on Jan. 3, and the third on March 6, 1744. Pemaquid Proprietors' Records, *Mss.*, I: 6-7, 8-9.



disputed title. In fact the history of the Pemaquid Proprietors from the date of their organization till their close is the history of boundary controversies, uncertain claims, and innumerable law suits. Nearly every grant which had been made by the Pemaquid Proprietors seems to have brought up the question of validity against some other organizations, notably the Kennebec Purchase Proprietors, the Pejepscot Company, or the Lincolnshire Company.<sup>74</sup> To these legal matters we will return later.

#### THE ACTIVITIES OF THE GREAT PROPRIETORS GRANTING TOWNSHIPS AND LANDS

The Great Proprietors invariably claimed and controlled a large tract of lands and their chief activities consisted of the disposal and the settlement of their territories. In the disposition of lands they adopted the similar method which the general courts practiced, namely, granting townships to a group of proprietors and granting smaller tracts to individuals. The only difference between these two bodies was in the fact that the Great Proprietors did not have any governmental jurisdiction over their grantees; their powers were merely territorial and with the grant the grantees passed into the jurisdiction of the general court.

Most active in the field of creating townships among the Great Proprietors were the Masonian Proprietors. Imme-

<sup>74</sup> For example, on August 5, 1763, the proprietors made a grant of 100 acres to Charles Liesner. Complications followed with the Waldo Patentees and after a troublesome negotiation an equivalent grant was made on August 18th. Pemaquid Proprietors' Records, *Mss.*, I: 39, 40-41.

Thus, whenever the proprietors made any grant, they either added that they will defend the grant in legal complications at their expenses or that they will be responsible for whatever happens thereupon and the damages therefor. Pemaquid Proprietors' Records, *Mss.* I: 44, 59, etc.

diately upon the formation of the Propriety in 1746, the Masonian Proprietors successfully assumed and exercised the powers of disposing of their remaining land under the Mason title. After quitclaiming their power over the lands and improvements within the organized towns of the Province, they began to grant townships. Within six months of their organization they received petitions from no less than thirty-one townships and thirteen individuals,<sup>75</sup> and they granted five townships in 1748, thirteen in 1749, six in 1750, and thirty from 1751 to 1773, in all fifty-four townships.<sup>76</sup> Of these the more important ones, comparable to the Massachusetts line townships in New Hampshire, were the tiers of eight townships called the Monadnock townships, granted between 1749 and 1752 as follows: No. 1 (or South Monadnock), Rindge, 1750; No. 2 (or Middle Monadnock), Jaffrey, 1749; No. 3 (or North Monadnock), Dublin, 1749; No. 4, Fitzwilliam, 1752; No. 5, Marlborough, 1752; No. 6, Nelson, 1752; No. 7, Stoddard, 1752; and No. 8, Washington, 1752. The number of proprietors in these townships varied from thirty to sixty, forty being the prevailing number.

All these grants were decidedly speculative and numerous regrants were accordingly necessary. Nothing in the nature of quit rents, which were characteristic of the New Hampshire Province charters, was reserved in these Masonian grants, but fifteen Proprietors' shares were reserved in every grant, free from all taxation until improved. Moreover, two additional shares were also reserved in a majority of the Masonian townships as "law lots." These were granted to Mathew Livermore and William Parker, the attorneys of the propriety, for their legal services. The

<sup>75</sup> Reported on Dec. 7, 1748. *New Hampshire State Papers*, XXIX: 234-237.

<sup>76</sup> All Masonian town charters are conveniently collected in *New Hampshire State Papers*, XXVII-XXVIII.

conditions of grants, with the exception of these few items, were similar to those of the other colonies of the period. In addition, all white pine trees were reserved for the crown, as in the New Hampshire Province charters.

Toward the Massachusetts grants in New Hampshire they took a very lenient attitude, confirming their original rights or giving equivalent privilege in some other townships. Where resistance was made by the grantees, troubles, even law suits, followed in which the Proprietors were always victorious.<sup>77</sup>

As it has been noted above, the Masonian Proprietors thus correspond to the colonial governments in the matter of granting land. They were the grantors, and not grantees, of numerous townships of the eighteenth century. As such they had no obligation to fulfill except to supervise the settlements, to hear complaints of the grantees, and to do justice to them as any other general courts. But the Masonian Proprietors could not invest their grantees with the political or municipal privileges incident to the townships as did the New Hampshire Province in many of its grants; the grantees under the former had to apply to the New Hampshire government for these rights.

The grants of land and townships which were made by the Kennebec Purchase Proprietors were mainly used to further their speculative interest. In order to settle their territories and thereby increase the value of each Proprietor's shares, they freely offered land on condition of actual settlement within a short period. For example, between 1752 and 1753, they granted no less than six townships. In March, 1752, they granted a tract of five miles square to three persons in Massachusetts, on condition that the grantees introduce one hundred settlers in three years; in

<sup>77</sup> A brief survey of these several points may be found *ibid.*, XXVIII: vi-viii.



October of that year, they granted three townships, respectively, to John Stedman of Rotterdam, Germany, Gershom Flagg, and Henry Ehrenfield of Frankfort, Germany, on the same conditions; in June, 1753, they voted to grant to all persons who had settled on their land without permission of the Company previous to the year 1749 the land which they had improved, upon petition; the following month, they granted 21,000 acres to three persons, on a similar condition as above, but with the understanding that, in case they can not fulfill the conditions, they shall have grants of land in proportion to the number of settlers introduced; in following June, they granted a township to Florentius Vassal on the same condition.<sup>78</sup> Nothing, however, was done in any of these grants and the scheme fell through; and it was not till after 1753 that any successful attempt was actually made.<sup>79</sup>

No less active were the Pejepscot Proprietors in granting land. In 1714 the Massachusetts General Court resolved to sell her eastern country and appointed a committee to receive the claims of all persons in that district. The Pejepscot Proprietors, in their enthusiasm for the new vision before them, not only filed their claims but also proposed a definite plan. They proposed that the General Court should (1) confirm their purchase, (2) encourage a fishing town at Small Point, (3) protect settlers when there are more than twelve settled in the district, (4) give public help to the settlers in their maintenance of a ministry, and (5) exempt them from any Province tax for seven years. In return the Proprietors agreed (1) to survey and lay out, at their own cost, three or four townships; (2) in seven

<sup>78</sup> Kennebec Purchase Proprietors' Records, *Mss.*, 1: 123, 151-152; II: 3-4, 11, 24. Gardiner, *History of Kennebec Purchase*, II: 280-281.

<sup>79</sup> These successful attempts will be related in connection with their activities in inducing immigrants. See below 258ff.

years, if peaceful, to settle fifty families in each with necessary inducements and in a defensible manner; (3) to lay out land for minister, ministry, and school; and (4) to furnish materials for the meeting house and pay £40 toward the maintenance of an "orthodox gospel minister" for five years. The committee of the Court reported favorably upon the plan and the Proprietors' purchase was confirmed, exempting the settlers from the Province tax for five years.<sup>80</sup> Having thus been given legal encouragement, the Proprietors immediately launched a campaign for settlement and placed large advertisements in the Boston newspapers, giving land and offering inducements for settlers in tune with the proposal they had made to the General Court.<sup>81</sup>

The way the Lincolnshire Company Proprietors worked was similar to that of the other Great Proprietors. In 1729, for example, the committee "to manage and bring forward the Settlements" reported and the Proprietors agreed (1) to "grant Gratis" 120 acres, as far as 120 families, to each person who will build a house within one year of his arrival, settle a family, and inhabit there for three years "provided they are of ability to support & subsist themselves"; (2) to reserve lots for minister and school; (3) to pay the first settled minister £50 per annum for two years; (4) to build a saw mill; and (5) to keep a sloop running between Boston and the St. George River.<sup>82</sup> Thomas Westbrook was one of the active agents in the Company's interest. As early as 1720 it was agreed that he should settle twenty-five families on the St. George River, each family building a

<sup>80</sup> Confirmed on May 25, 1715. Pejepscot Proprietors' Records, *Mss.*, I: 37-41. *Mass. Acts and Resolves*, IX: 319, 337, 379, 395-396, etc.

<sup>81</sup> Pejepscot Proprietors' Records, *Mss.*, I: 44-45, 46.

<sup>82</sup> Lincolnshire Company Miscellaneous Papers, 1717-1802, *Mss.*, Dec. 29, 1729.

dwelling house, improving land for three years, while Westbrook was to reside there two or three years "for the encouragement." In return the Associates granted Westbrook 10,000 acres of land "to be disposed of by him in such proportion as he shall find necessary for encouraging" the settlements and to keep the remainder for himself forever. The Associates promised two "Great Guns" for a blockhouse when Westbrook built one.<sup>83</sup> Next year he was at work and was attempting to bring about, first of all, a friendly relation with the Indians on the St. George River.<sup>84</sup> In 1720 also one Robert Edwards of Castleburg, Ireland, was appointed an agent of the Company to settle two townships and was granted a large tract of land for the purpose.<sup>85</sup> The work was slow as in other cases but still they proceeded vigorously in order to get the value of their own land increased as a result of settlement.

#### GREAT PROPRIETORS AND IMMIGRATION

"Whereas, Numbers of Gentlemen Proprietors of Land Within this Province have expressed their Inclination and Intention to several members of the United Society to settle their unimproved Lands with Germans and other Protestants, on advantageous terms to the Settlers; and as the arrival of a considerable Number of Foreign Protestants is daily expected; These therefore are to request said Gentlemen and other Proprietors that are alike minded, to send in their Proposals in Writing; and therein particularly to express the Quality and Quantity of the Land they would dispose of, with their Situation, whether East or West, &c., and what distance from Boston, and other town of Note, whether on a Bay or River, or of otherwise, what Distance from Water-Carriage or Landing Place &c., as also what Encouragement they'l give said Settlers, withe regard to Building, Stock, Utensils, &c.

N. B. Birest or John Franklin, in *Cornhill*, Boston."

<sup>83</sup> *Ibid.*, June 4, 1720.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*, March 7, 1720. This subject will be treated elsewhere in connection with immigration.



This<sup>86</sup> is one of many advertisements which appear in the Boston newspapers of the fifties. The phrase "Gentlemen Proprietors," refers to the Great Proprietors whose effort to settle their Maine lands with foreign immigrants, contributed a bright page in the history of the speculative proprietors of the eighteenth century. The movement started earlier than the above advertisement, however; as early as 1718 such method was used effectively.<sup>87</sup>

The Pejepscot Proprietors were the first of the Great Proprietors to become interested in the foreign immigrants as a possibility in the settlement of their land. Just about that time, in 1717, a dramatic figure appeared in Boston in the person of Capt. Robert Temple, later one of the largest shareholders of the Kennebec Purchase Company. He had been an officer in the English army and came to America with a view of establishing himself as a large landed proprietor, a purpose which naturally aroused the interest of those who had lands for sale. He was thus shown lands in Connecticut, especially the Winthrop holdings in New London, and the lands of the Pejepscot Proprietors in Maine. The Pejepscot Proprietors were already offering large privileges and inducements to settlers and finally won Temple to work in their interest in the competition against John Winthrop, represented by Thomas Lechmere, his brother-in-law and the Surveyor General of Customs at Boston.

The way Temple actually worked may be shown by an example of the vessel "McCallum" which arrived at Boson on Sept. 1, 1718, with some twenty Scotch-Irish families. Temple was again urged by Lechmere to send the immigrants to Connecticut but more attractive inducements were being offered by the Pejepscot Proprietors. In disappoint-

<sup>86</sup> *The Boston Post Boy*, Sept. 16, 1751.

<sup>87</sup> See Bolton, *Scotch Irish Pioneers*, 140-141.

ment Lechmere wrote to Winthrop on September 1, 1718, and among other things said:<sup>88</sup>

“You would aggrieve to their Settling about Tantiusques, wh<sup>h</sup> in my Opinion is y<sup>e</sup> best place, & Mr. Temple is deing what he can still to perswade y<sup>e</sup> Mr. to proceed for that place, . . . Y<sup>e</sup> method they go in w<sup>th</sup> y<sup>e</sup> Irish is they sell y<sup>m</sup> so many Acres of Land for 12<sup>d</sup> y<sup>e</sup> acre & allow y<sup>m</sup> time to pay y<sup>t</sup> in. I know Land is more Valuable w<sup>th</sup> You, & therefore I am afraid 'twill be y<sup>e</sup> more difficult to agree with y<sup>m</sup>.”

Temple rejected the Connecticut proposals and made arrangements by which the “McCallum” left Boston on September 8th with her Scotch-Irish passengers to the Merry-making Bay at the mouth of the Androscoggin River in Maine. Henceforth Temple became an active colonizer of the Kennebec country and engaged two large ships in 1718 and three more in 1719 to bring over families from Ulster. By 1720, he had introduced upward of 100 Scotch-Irish families on the Kennebec and Androscoggin sections. Thus were fostered the settlements at Cork, Topsham, Bath, Brunswick, and others.<sup>89</sup>

This was the period when the first wave of the Scotch-Irish Immigration reached Boston; in 1718 alone some 6,800

<sup>88</sup>*Ibid.*, 143; Ford, *Scotch Irish in America*, 133.

Earlier still, on July 28, 1718, Lechmere wrote to Winthrop: “They are none to be sold, have all paid their passages sterl<sup>g</sup> in Ireland; they come upon some encouragement to settle upon some unimprove Lands, upon what other Towns I know not.” On August 11 of the same year, he again wrote that “they are come over hither for no other reason but upon Encouragement sent from hence upon notice given y<sup>m</sup> they should have so many acres of Land given them gratis to settle our frontiers as a barrier against y<sup>e</sup> Indians.” Bolton, *op cit.*, 133, 139, quoting.

<sup>89</sup> Bolton, *op. cit.*, 144, 218–219; Ford, *op. cit.*, 230–231, 234–235; Hanna, *Scotch Irish in America*, II: 24; Maine Historical Society, *Collections*, Second Series, IV: 240.

arrived at Boston. Advertisements were used to invite them to different places and some went to Casco Bay, Maine, and others to the Kennebec and Merrimac valleys. It was at this time that Londonderry, N. H. was granted to them by Massachusetts and the settlement founded. The second wave which reached Boston in 1719-20, was mainly sent to Worcester and to Connecticut towns.<sup>90</sup> That there were many proprietary inducements for settlements being offered to them may be seen from the correspondences of Lechmere to Winthrop. On July 28, 1718, he wrote that<sup>91</sup>

“they are none to be sold, have all paid their passage sterile in Ireland; they come upon some encouragement to settle upon some unimproved Lands, upon what other Towns I know not.”

On the 11th of following August he again wrote, denying the cheapness of labor “for never were they dearer than now, there being so much demand for them,” and affirming that they “are come over hither for no other reason but upon encouragement sent from hence.”<sup>92</sup>

More brilliant were the activities of Samuel Waldo and the Proprietors of the Lincolnshire Company. The Lincolnshire Proprietors, during the years 1720-1730, offered

<sup>90</sup> Hanna, *op. cit.*, II: 17ff.; Bolton, *op. cit.*, 140, 141; *Mass. House Journal* (Ford Edition), II: 65, 83. For numerous petitions for grants of land to these immigrants, see *Mass. House Journal* (Ford Edition), II: 91, 134, 212, 318, etc.

The Scotch-Irish immigrants who settled at Worcester, Mass., numbering about forty to sixty families, bought of Col. John Stoddard and others of Northampton a township, consisting of 29,874 acres in 1738 for £7,300. The township, now Pelham, Mass., was settled by them that same year by thirty-four families. The other group went to Colrain during the same year. Hanna, *op. cit.*, II: 20; Ford, *op. cit.*, 227-228; Connecticut Valley Historical Society, *Proceedings*, II: 199-200.

<sup>91</sup> Bolton, *op. cit.*, 133.

<sup>92</sup> *Ibid.*, 139; Ford, *op. cit.*, 222-223.



many persuasive inducements and employed agents with promise of bounty for procuring settlers, but did not succeed in getting enough men for the settlement of their land.<sup>93</sup> As early as 1720 the Proprietors tried to get Irish immigrants and made an agreement with a certain Robert Edwards of Castleburg, Ireland, to settle two townships on the St. George River. Edwards was to enlist eight to ten influential and wealthy associates in Ireland to procure settlers and to send fifty families each to the two towns. In return he was granted 25,000 acres in each of the two townships, 15,000 acres for the fifty families, 1,000 acres for public uses, and 9,000 acres for the undertakers themselves. When one hundred families are settled, the undertakers were to receive 10,000 acres in addition. The Proprietors also promised to pay £50 for the first settled minister for two years and to furnish four "great guns" for the block houses for the protection of the settlers. Nothing important seems to have followed these plans and inducements.<sup>94</sup>

<sup>93</sup> On June 4, 1720, the proprietors granted 10,000 acres to Thomas Westbrook of Portsmouth upon promise that he should settle twenty-five families, each building a dwelling house and improving the land for three years. The proprietors also promised to furnish with two "great guns for a blockhouse in case Westbrook should build one." Westbrook's attempts seem to have been fruitless. Lincolnshire Company Miscellaneous Papers, *Mss.* On Dec. 29, 1729, the proprietors' committee "to manage and bring forward the settlements" reported and the proprietors agreed to grant gratis 120 acres to each person up to 120 families who will build a house and settle a family, to reserve lots for ministers and schools, to pay the first minister £50 a year for two first years, to build a saw mill, and to keep a sloop running between Boston and the points. *Ibid.*

<sup>94</sup> *Ibid.* On Dec. 13, 1721, Col. Cornelius Rowan was given 25,000 acres to settle 160 families, while in 1728, on April 18, Capt. James Gregg and Alexander Nicholas were granted two townships of seven and one-half miles square each on condition that they settle 80 families. *Ibid.* No further records are found.

Samuel Waldo then comes into the life and activities of the Company. He was sent to England as an agent in the proceeding against the authority of David Dunbar, the Surveyor General of King's Woods, whose aggressions and extortions became disastrous to the interest of the propriety. Not only did he succeed in his mission, but Waldo also obtained the confirmation of the proprietary title to the land which they claimed. For this service Waldo was rewarded with one-half of the whole patent, while in 1734 he bought another 100,000 acres, thus becoming the owner of more than two-thirds of the total interests of the Lincolnshire Company.<sup>95</sup>

While Waldo was in England, he already began to induce Irish settlers upon his land by issuing circulars, and continued to do so between 1733 and 1736. In 1735 he succeeded in making a contract to settle twenty-seven Scotch-Irish families at Broad Bay, each family receiving 100 acres of land gratis, but they all went to settle on the St. George River, the town later becoming known as Warren. In 1736 upward of forty-five Scotch-Irish families were settled by him in the same district.<sup>96</sup>

Then Waldo turned to the Germans as prospective settlers. He circulated proclamations in Germany and offered most inviting inducements to the emigrants. In 1740 he succeeded in inducing forty families from Brunswick and Saxony, Germany, and, upon their arrival, located them at Broad Bay, thus laying the foundation of Waldoborough,

<sup>95</sup> Dunbar was appointed in 1726. Lincolnshire Company Records, *Mss.*, 53-54-55-57-59-68. Williamson, *History of Belfast*, I: 42-43.

<sup>96</sup> Thompson, *Germans in Maine*, in *The Pennsylvania-German*, XII: 596-597; Easton, *History of Warren*, 56; Williamson, *History of Waldo*, 85.

Me.<sup>97</sup> His campaign was more vigorously launched in the early fifties for the same purpose. In 1752 Waldo was in Scotland and in 1753 he was again distributing circulars in Germany. These circulars styled Samuel Waldo as "Royal British Captain Waldo, Hereditary Lord of Broad Bay," and set forth the plan of settlement in alluring terms: each township was to consist of 120 families, each family getting 100 acres gratis, without any further obligations, if it lives there seven years, to be taken up either "in person or by substitute," thereby implying the possibility of absentee-ownership; more lands were offered at reasonable rates and the first purchaser was to get a bounty of 200 acres; assurance of protection by the government and the freedom of worship were specified, while it was emphasized that they "need not bear arms or carry on the war"; necessary support and provisions were promised for four to six months; Protestant minister was given free passage and £15 for two years, while 200 acres were reserved for the maintenance of a church and free boards were provided for the first church building.<sup>98</sup> These circulars were circulated extensively and induced sixty families to emigrate immediately from Germany and Scotland and by the time Waldo died in 1757 he left the patent "a flourishing settlement."<sup>99</sup>

The Kennebec Purchase Proprietors were no less active and they too made the Germans "the tool of their selfish

<sup>97</sup> Maine Historical Society, *Collections*, VI: 322. Williamson, *History of Waldo*, 85. More German colonists were added by 1749. Williamson, *History of Belfast*, I: 43.

<sup>98</sup> One of the circulars was dated March 23, 1753, in Germany. Maine Historical Society, *Collections*, VI: 322; Thompson, *Germans*, *op. cit.*, 689.

<sup>99</sup> Williamson, *History of Belfast*, I: 44. "He found the patent a wilderness; he left it a flourishing settlement." Mider, *History of Waldoborough*, 51-53.



speculation.” The Kennebec Proprietors were perhaps the most powerful of the Great Proprietors and, since their organization in 1749, they granted lands liberally, offered alluring inducements, employed agents at different places, and advertised widely for the purpose of bringing about the settlement of the Kennebec territory. Between 1752 and 1753 they granted no less than seven townships for that purpose.<sup>100</sup>

When the Kennebec Proprietors began their activities in 1749, Joseph Crellius, at first Samuel Waldo's agent, was actively engaged in bringing Germans into New England colonies. After obtaining several township grants for the German Protestants from the Massachusetts government,<sup>101</sup> he was in Germany in 1749-50. In the autumn of 1750, Crellius's German immigrants, numbering about thirty families, arrived at Marblehead. The Pemaquid Proprietors secretly planned to get them and a certain Peter Wild was employed to be on the immigrant ship as Crellius's aid, in order to gain the confidence of the passengers and persuade them to settle on their territory. This scheme was disclosed and Wild disappeared.<sup>102</sup> In the meanwhile

<sup>100</sup> Kennebec Purchase Proprietors' Records, *Mss.*, I: 123, 151-152; II: 3-4, 11, 24, etc. Gardiner, *History of Kennebec Purchase*, 280-281.

<sup>101</sup> Crellius proposed to the Massachusetts Government to bring in Germans in 1748 and in January, 1749, a committee was appointed by the General Court to look into the matter. This action resulted in the grant of several townships for the German Protestants, two in Franklin County and two in Maine. Crellius was to receive a reservation of 200 acres in each township if he settled 120 Protestant families in each township within three years. *Mass. Acts and Resolves*, III: 558; XIV: 352. Thompson, *Germans in Maine*, in *The Pennsylvania-German*, New Series, I: 106-107.

In December, 1749, Lieutenant-Governor Spencer Phips in his message referred to the scarcity of labor. This Crellius heard at Philadelphia and wrote on Dec. 29, 1749, again offering to bring

the Kennebec Proprietors also were active and persuaded the immigrants to settle in the Kennebec country on condition that the Proprietors would grant them 100 acres to each family. The terms were accepted and the German immigrants proceeded thither in December.<sup>103</sup> Next year, in September, when Crellius arrived at Boston with another cargo of about 300 Germans,<sup>104</sup> the Kennebec Proprietors voted to grant them a township to be called Frankford, to give 100 acres of land gratis to each family, to provide free passage from Boston and provisions for the ensuing winter and spring on a year's credit, and to construct a fort for their protection. The only conditions imposed upon each settler were the clearing of five acres of land and building of a house in three years. These inducements

in Germans. Massachusetts Archives, Emigrants, *Mss.*, 42, 48; Schoff, *German Immigration into Colonial New England*, in *The Pennsylvania-German*, XII: 397-398.

<sup>102</sup> Thompson, *op. cit.*, in *The Pennsylvania-German*, New Series, I: 107-108.

<sup>103</sup> *Ibid.*, I: 107. Kennebec Purchase Proprietors' Records, *Mss.*, I: 102-103, 108-109. Schoff, *op. cit.*, 397ff.

<sup>104</sup> In 1750 a company was formed in Boston for the establishing of a glass factory near Boston. The partners in the enterprise were John Franklin and Norton Quincy of Boston, Peter Etter, Joseph Crellius of Philadelphia, and Isaac Winslow of Milton. They leased a tract of land of John Quincy on Shed's Neck in Braintree and settled it with Germans, calling it Germantown. The enterprise failed and the proprietors tried to dispose of the incoming Germans to other enterprisers at profit. Thus the arrival was advertised widely in the Boston papers. *The Boston Post Boy*, Sept. 25, 1752; *The Boston Evening Post*, Sept. 25, Oct. 2 and 9, 1752. The interested persons were to treat with John Franklin or Isaac Winslow or Captain Hood. The cargo thus disposed of was originally intended for the proposed factory. Patee, *Old Braintree and Quincy*, 474-486; Faust, *German Elements in the United States*, I: 260-261.

Even Benjamin Franklin, John's brother, bought eight building lots in the village to help enterprise in 1751.

were accepted and the Germans started thither.<sup>105</sup> In 1752 Samuel Goodwin, one of the Proprietors, was employed as an agent with the aid of Peter Wild, now his interpreter, and succeeded in persuading a certain Captain Wilson to bring an accession of forty-six Germans and a few French families to Frankfort.<sup>106</sup> Next year, the Proprietors sent to the German settlers "one Barrel of Rum" to "treat the Indians . . . to make them easy."<sup>107</sup> In October, 1752, they again attempted to procure German settlers by granting one township each to John Stedman of Rotterdam, Germany, Gershom Flagg, one of the Proprietors, and Henry Ehrenfeld of Frankfort, Germany, on condition that they should send 100 families. The scheme failed, however.<sup>108</sup> The following year, 1753, Florentius Vassal, another one of the Proprietors, became an agent of the Company and went to England and Holland to procure settlers. He failed to accomplish his aim.<sup>109</sup> In September, 1753, the Proprietors again adopted the scheme of a year ago and granted three townships to John Stedman, Gershom Flagg, and Henry E. Luther of Frankfort, Ger-

<sup>105</sup> Kennebec Purchase Proprietors' Records, *Mss.*, I: 102-103; Gardiner, *History of Kennebec Purchase*, 280.

<sup>106</sup> They were amply paid for the work by Dr. Sylvester Gardiner, the treasurer of the Company. Thompson, *op. cit.*, I: 111; Goold, *Fort Hallifax: Its Projectors, Builders, and Garrison*, in Maine Historical Society, *Collections, First Series*, VIII (hereafter cited as Goold, *Fort Hallifax*): 213, foot note.

<sup>107</sup> Kennebec Purchase Proprietors' Records, *Mss.*, II: 26.

<sup>108</sup> *Ibid.*, I: 151-152.

<sup>109</sup> *Ibid.*, II: 24. Gardiner, *History of Kennebec Purchase*, 280; Thompson, *op. cit.*, I: 26. That same year Vassal proposed to the Massachusetts government to transfer to him and his associates, the Kennebec Proprietors, the whole territory between the Penobscot and Quoddy on the condition that they settle the territory. The General Court assured him the grant if they would obtain His Majesty's approbation and introduce 5,000 settlers and the proportionate number of ministers. The attempt failed.



many, on condition of introducing 100 families in three years. Luther was active but the whole scheme again fell through.<sup>110</sup>

At the conclusion of the French and Indian War, the Kennebec Proprietors renewed their attempt vigorously. At their meeting on May 18, 1763, they caused elaborate advertisements to be extensively circulated, not only in America alone, but also in England and Ireland. These advertisements praised the Kennebec country, its fertile soil and convenient approach and boasted the settlement of eleven towns there already; proposed to found three townships on each side of the River; offered 200 acres gratis to each family on condition that each should build a house and till five acres of land in three years and dwell there "personally or by substitute" for seven years; and reserved 200 acres each for the first minister and the ministry and 100 acres for a school lot and other public purposes. It was specified that if "any Protestant Families in Europe should incline to come over and settle," they may apply to Florentius Vassal in London.<sup>111</sup> Similar campaigns were continued over several years, but the attempts were only partially successful, due partly to many legal controversies over the title and partly to the increased attraction of the Vermont territory.<sup>112</sup>

<sup>110</sup> North, *History of Augusta*, 40-41.

<sup>111</sup> See for example a specimen in *The Massachusetts Gazette and Boston News-Letter*, June 9, 1763. Similar advertisements appeared in *The Connecticut Courant* and *The New York Gazette*.

Similar attempts were made in 1760-1761, when 3,000 acres were offered to the promoters. *The Boston News-Letter*, Feb. 21-28. and March 6, 1760; *The New York Gazette*, Feb. 20, 1761.

<sup>112</sup> See below 272ff.

The French immigration into New England was chiefly confined to the latter part of the seventeenth century, after 1680. There was very little connection, as far as I was able to find, with the proprietors of the time except once. The Atherton Company, a sort

## THE GREAT PROPRIETORS AND FRONTIER DEFENSE

The defense of settlers was a problem of prime importance in bringing about the settlements in the eastern frontiers and soon after their organization as a propriety the Kennebec Proprietors took the matter into serious consideration. During 1750 and 1751 they petitioned the Massachusetts General Court for a better defense of the eastern frontiers but they failed to get any support.<sup>113</sup> In 1752, after in vain petitioning the Massachusetts General Court during the previous two years,<sup>113</sup> they caused to be built at Frankfort, across the river from Fort Richmond, a "defensible house" which afterward became known as Fort Shirley. It consisted of two block houses and a long shed. Nine years later it was renovated and used as a court house and tavern.<sup>114</sup>

A greater project was undertaken in 1754. On April 3, 1754, the Proprietors met in Boston and agreed to build or cause to be built a fort at Cushnock, if the Massachusetts General Court will build one at Teconett on the Kennebec River and protect them while they are at work. A committee was appointed to carry out the plan at the expense of the Company. Already on March 28th, Gov. Shirley advised the General Court to provide a necessary means of defense against the French and Indians, and the

of land company which was born out of the Massachusetts-Rhode Island boundary controversy, made bargain with the French refugees and attempted to settle them in the Narragansett country, Rhode Island, in 1686. This territory they claimed under a Massachusetts grant. The refugees were finally located at Kingston, but trouble followed and they were scattered several years later. The French settlement at New Oxford, Mass., after 1680, had no reference to the proprietors. Baird, *Huguenot in America*, II: 294ff.; Daniels, *Huguenot in Nipmuck Country or Oxford prior to 1713*.

<sup>113</sup> See for activities, Goold, *Fort Hallifax*, 215.

<sup>114</sup> Dow, *Fort Western on the Kennebec*, 9.



latter, on April 10th, voted for the establishment of forts. The Proprietors immediately negotiated with the Governor, who decided to accept the plan which the Proprietors presented. In a communication addressed to the Kennebec Proprietors on April 16th, Gov. Shirley officially announced that the Government would build a fort at Teconnet and would provide soldiers to guard the work at Cushnock. The next day the Proprietors met again, re-endorsed their original plan in view of the assurance given in the Governor's letter, and appointed a new committee to execute the plan.<sup>115</sup> The Proprietors at once began their project by appointing Gershom Flagg, one of their members, to supervise the preparations and the building of the fort. Flagg gathered the necessary artisans and assistants and set sail on May 15th, with plenty of supplies and stores. The actual building of the fort was begun early in July under the official protection and the fort, since known as Fort Western, was roughly completed at a great expense to the Company by the close of that year, 1754.<sup>116</sup> The works thus completed consisted of two block houses of twenty-four feet square at the opposite angles, two sentry boxes of twelve feet square each at other two angles, and a house of hewn timber of one hundred feet by thirty-three feet. The whole structure was picketed in at a thirty-feet distance. The fort at Teconnet was built according to the

<sup>115</sup> The full text of these actions and activities are given in Dow, *Fort Western on the Kennebec*, 11ff. The plan was made in detail even to the location and dimensions of sheds and block houses. The full text of the first proprietors' votes, together with plans, are on pages 11-12. These records were checked up with the Proprietors' Records and found to be true.

<sup>116</sup> Flagg's contract, together with the list of artisans, supplies, and stores, are given in Dow, *Fort Western on the Kennebec*, 26-29. The detail of the building and the expenses incurred by the Company are given on 27-38. These I have also checked up with the Proprietors' Records.



promise about the same time by the Government and came to be known as Fort Hallifax. This was a vitally necessary fort, together with Fort Western, for the defense of the Kennebec settlements, and the Proprietors expressed their gratitude by offering Gov. Shirley in December, 1754, even before the actual completion of the works, eight shares in the Company's lands.<sup>117</sup>

The other Great Proprietors were also anxious to secure the defense of their respective territories and were no less active in that respect. In 1716 the Pejepscot Proprietors built two forts, Fort Brunswick and Fort George, at their own expense.<sup>118</sup> Moreover they encouraged the people to enlist for the defense of the frontiers in 1715 and upon dividing land each Proprietor was required to contribute toward the means of defense according to his shares.<sup>119</sup> The Pemaquid Proprietors also built a small fort at Pemaquid and fitted it with eight "canons."<sup>120</sup> The Lincolnshire Company and the Twenty Associates too caused a block house to be built on St. George River at their expense for the defense of their settlements. They assessed, in 1722, £40 a share for the completion of the work and its upkeep.<sup>121</sup>

<sup>117</sup> Dow, *Fort Western on the Kennebec*, 20-21. That the Proprietors must have used the Governor for their tool is shown there.

<sup>118</sup> Pejepscot Proprietors' Records, *Mss.*, I: 50-51, 51-54. An account of the cost is also given there. This was one of the very first things which the Pejepscot Proprietors have done upon organization.

<sup>119</sup> *Ibid.*, I: 51, 67-69; Maine Historical Society, *Collections*, XXIV: 251ff.

<sup>120</sup> In 1763-4-5. Pemaquid Proprietors' Records, *Mss.*, I: 44, 54, 58.

<sup>121</sup> Lincolnshire Company Miscellaneous Papers, *Mss.*, 1720; April 6, 1722; July 20, 1722; etc.

<sup>122</sup> Pejepscot Proprietors' Records, *Mss.*, July 9, 1750.

<sup>123</sup> Kennebec Purchase Proprietors' Records, *Mss.*, I: 54, 58.

<sup>124</sup> Pejepscot Proprietors' Records, *Mss.*, for March 19 and April 15, 1751. See also for May 15, 1751.

## CONTROVERSIES OVER THE EASTERN CLAIMS

The eastern frontier of the Province of Massachusetts Bay, now the State of Maine, was a net work of confusing grants in the eighteenth century. Grants, indefinite in their limits, were made to individuals or companies and were revoked or reissued with varying boundaries. Interest or favor could obtain them and, from carelessness or ignorance of geography, the same territory was covered by more than one grant. To complicate the situation many tracts were held under Indian deeds. The revival of the Great Proprietors meant the revival of all these conflicting claims and numerous legal controversies were waged during the second half of the eighteenth century. Of these the more notable controversies were those in which the Kennebec Purchase Proprietors were involved.

When the Kennebec Purchase Proprietors revived their claims to a large tract of land in 1749, the Pejepscot Proprietors were already actively in possession of an extensive portion of it. At once a controversy was started between these two Proprietaries which lasted for nearly ten years. As soon as the sphere of the Kennebec Purchase Proprietors' activities was known, the Pejepscot Proprietors were the first to defy their right, as conflicting with their own. On July 9, 1750 they voted to post an advertisement at Brunswick, and agreed that it was the intention of the Pejepscot Proprietors to defend the inhabitants of Brunswick and of the neighboring towns in the possession of their land and that any person taking up land under any other title would be prosecuted.<sup>122</sup> The Kennebec Purchase Proprietors, on the 19th of the following December, proceeded to claim their own by appointing Mathew Livermore and William Parker of Portsmouth as their counsel and

<sup>125</sup> Kennebec Purchase Proprietors' Records, *Mss.*, I: 63ff., 150-151; II: 1-2, etc.

voting to defend their grants and title at the Company's expense. They also appointed a committee to answer the advertisement of the Pejepscot Proprietors printed "with design to prejudice the Proprietors."<sup>123</sup> The Pejepscot Proprietors in the meanwhile did their best to convince the people of Brunswick of their just right and on March 19, 1751, promised them that if any of the inhabitants of Brunswick or Topsham should be molested or disturbed by the Kennebec Purchase Proprietors the Proprietors would stand by them and indemnify them against the Kennebec Purchase Proprietors' claims. Notwithstanding these attempts, a few had bought title from the Kennebec Purchase Proprietors, and the Pejepscot Proprietors on the 15th of April voted against any encroachment on their territory and agreed to advertise several deeds to show the exact bounds. In the following May in an advertisement they specifically forbade the people to settle under the Kennebec Purchase Proprietors.<sup>124</sup> The Kennebec Purchase Proprietors also proceeded vigorously to claim their right in the same territory and appointed committees from time to time during 1751-2 to prosecute the trespassers.<sup>125</sup> They also caused their patent to be published in order to show their just claim to the territory in conflict.<sup>126</sup>

Thus started the two Proprietaries entered into a bitter pamphlet war, most prolific in the year 1753. The Pejepscot Proprietors first led the way by publishing "The Plan and Extracts of Deeds . . ." in which they claimed the territory where Brunswick and Topsham and the neighboring towns lay. The Kennebec Purchase Proprietors, by their vote of Jan. 4, 1753, published "Remarks on the Plan

<sup>123</sup> "A Patent for Plymouth in New England To which is annexed Extracts from the Records of that Colony," Boston, 1751, printed by vote of the Company on August 14, 1751. See the last page of that pamphlet.



and Extracts of Deeds lately published by the Proprietors of the Township of Brunswick . . .”<sup>127</sup> In it they pointed out the “Inconsistency and Ridiculousness of their Plan and Extract” and concluded that “they neither defend the Pejepscot Claim, nor even shew where it is, but are wholly taken up in the Defense and Illustration of a claim opposite thereto!” It also maintained that the purpose of the Pejepscot Proprietors “is to blind the Eyes of People, and to delude the ignorant; and so to render ineffectual, as much as in them lies, the Endeavors of the Plymouth Company to settle the Eastern Lands.” The Pejepscot Proprietors followed with “An Answer to the Remarks of the Plymouth Company . . .” in February and maintained their original stand in stronger words.<sup>128</sup> The Kennebec Purchase Proprietors then published a long pamphlet, fifty pages in length, entitled “A Defense of the Remarks of the Plymouth Company on the Plan and Extracts of Deeds . . .” and reaffirmed their position in minute detail.<sup>129</sup> The controversy continued with unabated vigor on both sides for four years; both encouraging the people to buy land of them and to settle in their interest.

In 1757 the controversy began to see the dawn of settlement. The Pejepscot Proprietors made a proposal for

<sup>127</sup> “*Remarks on the Plan and Extracts of Deeds lately published by the Proprietors of the Township of Brunswick agreeable to their vote of January 4th, 1753.*” 12pp. Boston, Jan. 26, 1753. See also Ford, *Massachusetts Broad-sides*, No. 964, for their votes of Jan. 12, 1753.

<sup>128</sup> “*An Answer to the Remarks of the Plymouth Company or (as they call themselves) the Proprietors, of the Kennebec Purchase from the late Colony of New-Plymounth, published by virtue of their vote of 31st of January last. . . .*” Boston, 1753.

<sup>129</sup> The subtitle read: “*Being a Reply to their answer to said Remarks lately published, according to the Vote of March 28, 1753.*” Boston, 1753. It was published, however, late in that year.

settlement on March 12,<sup>130</sup> and the Kennebec Purchase Proprietors made a counter proposal on March 30, 1757.<sup>131</sup> On June 1, the former voted to accept the latter's proposal and appointed a committee to conclude an agreement.<sup>132</sup> The subject of the agreement was debated by the committees of the both Proprietors on June 8 and the substance was agreed upon, and the deeds of release were executed and exchanged, in accordance with the said agreement, on Feb. 20, 1758.<sup>133</sup> By this the Pejepscot Proprietors compromised in favor of the Kennebec Purchase Proprietors and the latter obtained a township of Bowdoinham and other smaller tracts. Upon running the boundary the southern line of this township encroached upon the northern boundary line of Topsham and negotiation was begun anew. The final agreement was reached nearly ten years later, on May 29, 1766. The compromise was based upon the clause in the confirmation of the Pejepscot Proprietors' land by the Massachusetts General Court in 1726, namely, "saving all other interest that may be found therein." The Pejepscot Proprietors released to the Kennebec Purchase Proprietors the lines between New Meadows and Kennebec Rivers, comprising the present towns of Phippsburg and Bath and determined the line between the two Companies to run from the

<sup>130</sup> Pejepscot Proprietors' Records, *Mss.*, I: 194-196. Also Records and Papers, Maine Historical Society, *Collections*, XXIV: 412-414.

<sup>131</sup> Kennebec Purchase Proprietors' Records, *Mss.*, II: 104, 105-107, 110-116. See also Pejepscot Proprietors' Records, *Mss.*, I: 196-198; *Papers and Records*, Maine Historical Society, *Collections*, XXIV: 415-417.

<sup>132</sup> Pejepscot Proprietors' Records, *Mss.*, I: 293; *Papers and Records*, Maine Historical Society, *Collections*, XXIV: 411-412.

<sup>133</sup> Kennebec Purchase Proprietors' Records, *Mss.*, II: 117-121. Pejepscot Proprietors' Records, *Mss.*, I: 198-200; *Papers and Records*, Maine Historical Society, *Collections*, XXIV: 417-420, 424-427, 427-430.



mouth of the Catherine River northwestward as the south line, and the west line about fifteen miles from the Kennebec River. In other words, the southern line of the town of Bowdoinham was made the line between the two Companies. In compensation therefor, the Kennebec Purchase Proprietors ceded to the Pejepscot Proprietors some 400 acres of land "on Cobbasecontee Pond, in Pond Town, so called." The settlement was then confirmed by both Proprietors.<sup>134</sup>

The other great controversies of the Kennebec Purchase Proprietors may be related briefly. The first was the controversy with the Clarke and Lake claim. This claim was based upon Indian deeds for a certain tract of land within the territory of the Kennebec Purchase Proprietors and, after sundry lawsuits and references, it was decided in 1758 that only the east side of the Kennebec River, the north line of the present town of Woolwich, should be the southern boundary of the Plymouth Patent and the north line of the Clarke and Lake claims.<sup>135</sup> The claims of the Wiscasset Company, also under Indian deeds, were finally settled, after numerous litigations, by a compromise in 1762, the boundary line between them being fixed at half way between the Sheepscot and Kennebec Rivers from the Monsweag Bay to the upper narrows of the Sheepscot River.<sup>136</sup> Another great controversy was with the Proprie-

<sup>134</sup> Kennebec Purchase Proprietors' Records, *Mss.*, II: 403ff. *Pejepscot Proprietors' Records*, in Maine Historical Society, *Collections*, XXIV: 461-464. The final deed was confirmed on June 17, 1766, by the both party. The Pejepscot Proprietors voted to give equivalent for whatever the people had lost on account of the above settlement in 1765. *Papers and Records*, Maine Historical Society, *Collections*, XXIV: 457-459. Gardiner, *History of Kennebec Purchase*, 277.

<sup>135</sup> See Gardiner, *History of Kennebec Purchase*, 276. Kennebec Purchase Proprietors' Records, *Mss.*, II: 148, gives the action of the Proprietors.

<sup>136</sup> Kennebec Purchase Proprietors' Records, *Mss.*, II: 300-305. Gardiner, *History of Kennebec Purchase*, 276.



tors of Pemaquid patent, which was settled in 1763. The Pemaquid Proprietors, in substance, acknowledged the right of their opponents to all that part of the Pemaquid territory lying west of the Pemaquid River and ponds. The Kennebec Purchase Proprietors immediately reconveyed to the Pemaquid Proprietors in return all that part of the present town of Bristol, lying west of the Pemaquid River, and south of a line described in detail. The Kennebec Purchase Proprietors also conveyed 2000 acres immediately north of the line described, to be laid out in a single tract between the two rivers and having its northern boundary parallel to said line.<sup>137</sup>

The Plymouth patent thus established after these controversies extended from Merrymeeting Bay to Norridgwock, about thirty miles in width and with the Kennebec River in the center. It also included Bath and Phipsburg below this line on the west side of the Kennebec River.

Besides these great controversies, the Kennebec Purchase Proprietors, like any other Great Proprietors of the period, were continuously involved in smaller litigations. These were all cases of ejectment or trespass and almost always ended in their victory.<sup>138</sup> One case was even appealed to the Crown, but it was decided in their favor.<sup>139</sup>

The Pemaquid Proprietors were another group of the Great Proprietors who had innumerable troubles as to their territorial claims and were beset with innumerable litiga-

<sup>137</sup> Kennebec Purchase Proprietors' Records, *Mss.*, II: 317-321. Pemaquid Proprietors' Records, *Mss.*, I: 33, 35-36, 42, 63, etc.

<sup>138</sup> For example, the case of ejection against Capt. James Cargill; action of trespass against Nathaniel Donnell; action of ejection against John Lamont; etc. *Documentary History of Maine*, VIII (*Baxter Manuscripts*): 347-352, 352-357-359. See also, A Famous Law Suit, 1765-1766, in *Maine Historical Magazine*, IX: 183-188, being the Gooch claim and the Shepherd case.

<sup>139</sup> See Goold, *Fort Hallifax*, 219, foot note. John Adams was one of the lawyers employed.

tions. When they came to their own they began to settle the territory which they claimed by issuing full warrantee deeds to those purchasing lands of them ; in many instances, where actions of ejectment were brought against such purchasers, they instructed their agent to appear before the courts in defense of the settlers under their title. Throughout their records one can read scattered references to such actions and, from time to time, they appointed committees “*To Prosecute in the Law To Final issue, any person, or persons, That shall Trespass upon or make any Encroachments on the Said Proprietors general Right as yet Undivided, and Take the Proper Steps in the Law.*”<sup>140</sup> Also the clerk of the Company is always empowered to bring suits against intruders and engage attorneys to carry them on.<sup>141</sup> It was in connection with these numerous law suits that such persons as William Cushing and John Adams were popularly engaged by the Pemaquid Proprietors as their counsel and attorneys.

The more outstanding cases which the Pemaquid Proprietors were called upon to defend are characteristic of the eastern claims cases. They may be taken as typical of similar cases which the other Great Proprietaries had to face. Of these we may note here the Drowne claim, the Toppan claim, the Vaughan claim, and the Brown claim, all being non-resident claims within the territory claimed by the Pemaquid Proprietors.<sup>142</sup>

<sup>140</sup> Pemaquid Proprietors' Records, *Mss.*, 23. Jan. 21, 1762. Seven days later, the same committee was instructed “to bring any writ of Trespass or Ejectment” at the Proprietors' expense. *Ibid.*, 24. See also, *ibid.*, 41, 36, 12, etc.

<sup>141</sup> *Ibid.*, 63-64, 70, 81, etc. The Proprietors' records after 1765 are full of these references.

<sup>142</sup> The controversy between the Pemaquid Proprietors and the Plymouth Company has been noted already in connection with the latter Company. See above 271.

Briefly stated these claims were as follows. The Drowne claim dates back to the patent of Robert Alsworth and Giles Elbridge, upon which the Pemaquid Proprietors based their claim also. Giles survived Alsworth and became sole proprietor, who upon death gave the entire title to Thomas Elbridge, the second son. In 1657 Thomas sold to Nicholas Davison the whole patent in two halves. After remaining dormant for over three score years, Shem Drowne, later a clerk of the Pemaquid Proprietors, claimed it in 1735 through his wife who was the descendant of Nicholas Davison and who for the first time took possession of the land.<sup>143</sup> The Toppan claim was based upon three Indian deeds, respectively dated 1661, 1662, and 1674. However nothing was done about the claim until 1702, when Christopher Toppan, a Newbury minister, bought them all for £110. Except in a few instances Toppan again left the land without improvement until the middle of the century when the claim was revived.<sup>144</sup> The Vaughan claim had its origin at a latter date. Between 1732 and 1740 William Vaughan bought a tremendous extent of land in a series of some dozen deeds. The territory included substantially all the land in the present towns of Bristol, Bremen, Damariscotta, Nobleborough, most of Newcastle, and parts of Jefferson and Waldoboro. William died in 1755 and left the territory by will to his children, who were represented by Eliot G. Vaughan in the controversial claim.<sup>145</sup> The Brown claim dates back to 1625 when John Brown bought of the Indians an extensive territory very similar to that of the Vaughan claim. The territory descended in dormant form from son

<sup>143</sup> *Report of the Commissioners of 1811*, 9-11.

<sup>144</sup> *Ibid.*, 12-15. The deeds are to be found, *Ibid.*, 82-83, 84-85, 85-86. Between 1720 and 1733, Toppan tried to settle the territory by sending a few settlers under alluring inducements. But not much was accomplished. *Ibid.*, 86-103.

<sup>145</sup> *Ibid.*, 104ff. Johnston, *History of Bristol*, 475-477.



to son, until 1720 when John Brown, John Brown, 2nd, and John Brown, 3rd, revived it. The latter relinquished his share to the heirs of Richard Pierce in 1734, while part of it was sold by the purchaser again to William Vaughan in 1734, thus complicating the Brown claim with the Vaughan claim. The heirs of Pierce, by several deeds, sold the remainder to several gentlemen of Wethersfield, Connecticut. The other two Brown brothers also in the course of time sold their shares in several deeds to others. Among the claimants of land under the latter procedure were Samuel Waldo of The Lincolnshire Company, Job Lewis of Boston, and William Noble. All these transactions branched off into smaller shares and the result was the most complicated situation that can be imagined.<sup>146</sup> The territory included in these claims was substantially the same. Besides the Vaughan claim as noted above, the Brown claim included most of the township of Bristol, and all the townships of Nobleborough and Jefferson; the Drowne claim covered all the township of Bristol, and a part of the township of Newcastle and Nobleborough; while the Toppan claim duplicated the greater portion of the Brown claim.<sup>147</sup>

The contest between the Pemaquid Proprietors and these several claims began about the middle of the century and continued until the early part of the next century in varying warmth. It not only called forth the attention of the Pemaquid Proprietary, but it often ended in numerous legal suits of ejection and trespass. Even among the claimants themselves there were instituted several suits, thus fighting themselves before bringing the contest against the Pema-

<sup>146</sup> *Report of the Commissioners of 1811*, 16, 106-108, 109ff. Johnston, *History of Bristol*, 470-474, gives a detailed description of different purchases and their respective titles, very complicated indeed.

<sup>147</sup> *Report of the Commissioners of 1811*, 23.

quid Proprietors.<sup>148</sup> Into the detailed presentation of these controversies, however, we need not enter here. It is sufficient to note that the final settlement did not come until after the submission of titles in 1811. The Commissioners appointed by the Massachusetts government decided the case in 1813, by which the Plymouth claims were endorsed as settled and the Drowne claim was awarded half a township. The Brown, the Vaughan, and the Toppan claims, founded upon Indian purchases, were all extinguished as never having had any foundation either in law or equity, the origin in unauthorized Indian deeds being declared invalid.<sup>149</sup>

There were also numerous independent suits of ejectment. Of these the most notable was that of Thomas Bodkin, of Boston, against four yeomen of Bristol, namely, James Bayley, John Randall, James Yeats and Simon Eliot. These were suits in ejectment brought to try the title to lands held originally under the Pemaquid patent. The case was first decided in favor of the demandant in the inferior court of common pleas in 1768 and then, in 1768-9, appealed to the superior court, where the appellants, the original defendants prevailed and the Pemaquid title was established.<sup>150</sup>

We may note here the Harvard College claim against the Pejepscot Proprietors, showing another angle in the controversies of the period. The President and Fellows of Har-

<sup>148</sup> See for example the case of Toppan *vs.* Vaughan, 1741-1742, which was finally appealed to the Superior Court at York and decided in favor of Toppan. *Ibid.*, 104-106. See also Cushman, *Sheepscott and Newcastle*, 114-117.

<sup>149</sup> *Report of the Commissioners of 1811*. See also Johnston, *History of Bristol*, 488-496.

<sup>150</sup> Colonial Society of Massachusetts, *Publications*, VI: 13, notes. All the necessary citations from the original papers in the Suffolk Court Files are given there. Pemaquid Proprietors' Records, *Mss.*, 12, 16, etc.

vard College, in 1730, sent a memorial to the General Court, reviving a grant of 1000 acres of land in Casco Bay district which was made in 1682. The Proprietors immediately answered by disclaiming the validity of the Harvard claim. Two years later the President and Fellows of Harvard College brought a suit of ejectment against Johnson Harmon and Proprietors. The case was decided in 1733 in favor of the defendants and the College appealed. After several trials and reviews, it was finally decided in 1738 in favor of the Pejepscot Proprietors, on the ground of prior claims of twenty-three years.<sup>151</sup>

All told, the controversies on the eastern claims brought out the real nature of the claims upon which the Great Proprietors founded their titles; it disclosed the most confusing net work of title in the Maine coast; and it also pointed out the invalidity of Indian purchases which were made without due process.

## II. THE WESTERN CLAIMS

No less significant than the revival by the Great Proprietors of their Eastern claims was the revival of the charter claims over the Western territory. By the middle of the century all the desirable lands in many of the old colonies had been either granted or engrossed and the new comers were forced to turn westward, beyond the mountains. The bold speculators of the period indeed were quick to seize the situation and began to look to those fertile lands of the West. Before the critical year 1763 the speculative mania for the western lands had manifested itself in the form of land companies and colonizing schemes with a view to exploiting the trans-montane lands. In 1747 the first Ohio company was organized and two years later

<sup>151</sup> Pejepscot Proprietors' Records, *Mss.*, V: 225, 237-238, 239-240, 253, 257, 269-271, 275-277, 279-282, 287ff., 291ff., 295-296.



obtained a grant of 500,000 acres toward the west of Virginia; in 1749 the Loyal Company was also organized and became the owner of 800,000 acres along the northern boundary line of North Carolina; the plans for the westward movement formulated by the Philadelphians culminated in the Franklin's scheme of colonization in the Ohio Valley in 1754-56; about the same period, Thomas Pownall suggested two border colonies, "one at the back of Virginia" and the other "in the Cohass on Connecticut river"; in 1755, Samuel Hazard of Philadelphia proposed that he should become by a grant from the Crown a lord proprietor of a large colony in the Ohio Valley, extending beyond the Mississippi, and even obtained a grant from the Connecticut colony for a release of her claims.

Into the midst of these discussions the New Englanders had thrown another fire brand which spread toward the neighboring colonies and which was not extinguished till after the Revolution. This was the revival of the Connecticut claim over the western territory and the scheme advanced by the Connecticut men for colonizing the Wyoming Valley in Pennsylvania. Indeed, the speculation in Connecticut reached its height in the revival of her claims to the western territory, based upon her "sea to sea" charter. "The movement grew out of the unsatisfied land hunger of the population of Connecticut," wrote Gipson, "and is a striking episode in the truly romantic history of the exploitation of the North American continent."<sup>152</sup>

The Connecticut Susquehanna Company was organized in 1753 for the purpose of settling the Wyoming Valley in Pennsylvania. It was started in and about Windham and the number of proprietors grew steadily to 840, subsequently increasing to 1,200 and spreading practically all

<sup>152</sup> Gipson, *Jared Ingersoll*, 317.

over the colony.<sup>153</sup> Advantage was taken of the Albany Congress of the colonies and there on July 11, 1754, the representatives of the Company purchased of the Iroquois chiefs a tract of land on the east bank of the Susquehanna River for the sum of £2,000 New York currency. In doing so the adventurers ignored the fact that the Delaware Indians were in possession of the tract. The Delaware Company was another enterprise of a similar nature, which bought of the Indians the title to lands from the Delaware River westward to the east line of the Susquehanna Company. This organization, although it received the sanction of the Connecticut government, was more or less a minor appendage to the Susquehanna Company. The narrative story of these two companies from that time on is the story of Indian raids and massacres, of Pennamites and Yankee wars, of the controversy over the territory by Pennsylvania and Connecticut both in America and in England, and of the pioneer adventures of the sturdy Connecticut men boldly settling in the Wyoming Valley under the disputed title. The controversy continued for nearly a quarter of a century until 1782 when it was settled by the Trenton Decree in favor of Pennsylvania.<sup>154</sup>

The method of granting land adopted by these companies was typically that of the New England colonies. The first definite regulation of the territory was made by the Susque-

<sup>153</sup> A company organized for a similar purpose at Colchester was incorporated into the Susquehanna Company. *Pennsylvania Archives*, Second Series, XVIII: 12.

<sup>154</sup> For a detailed narrative history of these two companies: Mathews, *Expansion of New England*, 118ff.; Pearse, *Annals of Luzerne County*, Chapter II; Gipson, *Jared Ingersoll*, 317ff.; Stone, *The Poetry and History of Wyoming*, Chapter IVff.; etc. All the materials including the minutes of the Susquehanna Company's meetings, are conveniently collected in *Pennsylvania Archives*, Second Series, XVIII.

hanna Company in 1762 at Hartford. It ordered one hundred proprietors "by themselves personally and not by substitutes" to occupy ten miles square of land on the Susquehanna within four months and keep occupying and improving for a period of five years, when the whole territory was to be given to those one hundred proprietors as a gratuity.<sup>155</sup> One year later, it ordered to grant eight townships of five miles square each, reserving however all mines and coal beds to the proprietors. Each township was to be granted to forty proprietors, to be divided into forty-three equal shares, reserving three shares for the public use; twenty-one settlers were to be introduced in a township before another township was to be granted.<sup>156</sup> Five years later, in 1768, two hundred more settlers were ordered to be encouraged to settle and £200 was voted "in providing proper materials, sustenance & provision for each forty settlers." It also appointed a committee to manage the affairs, agreed to provide a minister, and declared their determination to defend their title at their expense in behalf of the settlers.<sup>157</sup> That year five townships were actually formed, namely, Wilkesbarre, Hanover, Kingston, Plymouth, and Pittstown, and later three other townships followed so that by 1773 there were more than 2,000 Connecticut settlers on the Susquehanna and the Connecticut Assembly organized the settlements into a Connecticut township by the name of Westmoreland, to be included in Litchfield County.<sup>158</sup>

<sup>155</sup> *Pennsylvania Archives*, Second Series, XVIII: 41-42.

<sup>156</sup> *Ibid.*, XVIII: 47-48. The meeting of the proprietors at Windham, April 17, 1763.

<sup>157</sup> Hartford, Dec. 28, 1768. *Ibid.*, XVIII: 58-62. See also, 63-65.

<sup>158</sup> *Conn. Col. Rec.*, XIV: 217, 218, 465ff. The Susquehanna Company's settlements were divided into seven districts, while that of the Delaware Company into one, and all the necessary local governmental machineries were provided for.



The Delaware Company, although its existence was overshadowed by the Susquehanna Company and although it acted together with the latter in many things, was also active in bringing about settlements on the Delaware River. In October, 1760, the proprietors announced that they had erected three townships, each extending six miles along the Delaware and eight miles inland. They had also laid out a large town of eighty lots in the middle townships and had built thirty cabins, three loghouses, a grist mill, and a saw mill. The lands were parcelled out in 200-acres lots, twelve of which were to be cleared and improved and a house built on each within three years, on pain of forfeiture. In 1760 it was reported that there were already twenty men there and one hundred proprietors were expected in the spring.<sup>159</sup>

These two Companies are important in showing the last stage in the colonial land speculation; they were the first connecting link between the New England speculative proprietors and the post-Revolutionary speculation over the western lands. From the beginning the Susquehanna Company was put on a speculative basis and its shares were placed on the market at fluctuating prices. In 1753, when it was organized, its stock was valued at two dollars per share,<sup>160</sup> but each share sold variously from five and seven to nine dollars.<sup>161</sup> In January, 1754, the official price was set at four dollars per share, while in November of the same year it was raised to nine dollars, and each time the quota

<sup>159</sup> "The report of the Sheriff and Justices of Northampton County," Oct. 15, 1760, in *Pennsylvania Colonial Records*, VIII: 565. Mathews, *op. cit.*, 118-119.

<sup>160</sup> *Pennsylvania Archives*, Second Series, XVIII: 3.

<sup>161</sup> Stiles, *Extracts from the Itineraries and Other Miscellanies of Ezra Stiles, 1755-1794*, I: 72.

of proprietors to be admitted was increased.<sup>162</sup> The official rate for the share rose to £8 in 1761 and to £15 in 1762.<sup>163</sup> Committees were appointed from time to time to sell these newly ordered shares in different counties and they handled a profitable business.<sup>164</sup> In the Delaware Company territory, a share was sold for £40 in 1760, and every 200 acres were sold from eight to ten dollars.<sup>165</sup>

<sup>162</sup> Minutes of the Susquehanna Company's meetings, Jan. 9, 1754, in *Pennsylvania Archives*, Second Series, XVIII: 13. That of Nov. 27, 1754, in *ibid.*, XVIII: 23. In the former case, 350 proprietors were solicited, in the latter 800.

<sup>163</sup> April 9, 1754 (*ibid.*, XVIII: 37), when 200 more proprietors were ordered to be added. Nov. 16, 1762 (*ibid.*, XVIII: 45), when 50 more were voted to be added.

<sup>164</sup> For the list of shares sold, see *ibid.*, XVIII: 24, 25-32, 34-35, 38-39, 44, 46-47, 49-51, etc.

<sup>165</sup> *Pennsylvania Colonial Records*, VIII: 565.

## CHAPTER IX

### CONCLUSION

The story of the town proprietors in the New England colonies, of their development, organization, activities, and controversies, speaks for itself in pointing out the importance of the institution. Let us now note their significances in a way of general summary.

#### I

That "there was no land system" in the New England colonies "apart from the towns" was the conclusion which Osgood reached after his extensive study of the American colonies in the seventeenth century; and this conclusion has been accepted at large. The story of the New England town proprietors shows, however, that this conclusion is only partially true and this purely from the political or administrative point of view. Institutionally and territorially speaking, there was no land system in the New England colonies apart from the body of proprietors; there was no township apart from the proprietors. In short, the town was political and the body of proprietors territorial in their respective origin.

The supreme importance of the institution of town proprietors in the New England colonies, indeed, arises from the very fact that the proprietors constituted a land community, independent of the political community, in any township. As grantees of a township, they preceded the birth of a town; they were the creators of towns in the evolutionary sense. We have seen how, in the early period, the proprietors and the town were approximately the same and



how the proprietors' meeting at the same time served as the town meeting. But even then there was already some differentiation between the territorial and the political jurisdiction of the town and the proprietors alone claimed the former function. In some towns, as at Salem and Cambridge, there was a distinct separation of these powers from an early date. The definite separation of the two bodies with their respective functions, in general, began to appear toward the close of the seventeenth century and was complete in the following century.

The significance of the New England proprietors arises from this separation of powers within townships. From the beginning it was the proprietors, not the town, who had the complete jurisdiction over the town lands. As such, it was the proprietors, not the town, who occupied the important place in the New England land system and who constituted the last stage in the distribution of land to individuals. Between the general court and the individuals, the proprietors were the sole instrument in the transition of land titles from collective to individual ownership, involving the dissolution of themselves as a land community or transformation into a political community. It is true that the "town" controlled the division of land and the care of common fields in the early seventeenth century; but we have also seen that "town" was the "propriety" and a town meeting was nothing but a proprietors' meeting in its original conception. To be more specific, the proprietors controlled the distribution of land indirectly in the seventeenth century through the towns and directly in the eighteenth century through their independent corporate capacity.

As such the proprietors were responsible, as we have seen, for the general plan of the town, its streets and highways, its home lots and farms, its commons and common fields, its pastures and woodlands; for the establishment of town gov-

ernment, religious institutions, schools, mills of different descriptions, and other necessities of early agrarian community; for the supervision of settlements, the encouragement of settlers, the distribution of land to new comers, and the reservation of land for the future use. In other words, they were the builders of towns and constituted the nucleus of the body of freemen. This task they accomplished in the seventeenth century as actual settlers and toilers, in the eighteenth century as capitalists and speculators. In either case, the land gradually passed through the body of proprietors to individuals, in proportion to the proprietary shares or in accordance with the need of the new comers. The result was the scattered holdings on the part of the proprietors and the small tract holdings on the part of the non-proprietors. The proprietors as an organized body naturally passed away with the final division of the common and undivided land.

Closely connected with the importance of the proprietors as a last link in the distribution of land is the significance attached to the proprietary activities in the conquest of the New England frontiers. It was the proprietors who established the first official frontiers; it was the proprietors also who were chiefly instrumental in pushing that line northward and westward. This they did at first as settlers and later as capitalists and speculators. In this respect the activities of the speculative proprietors of the eighteenth century were particularly noteworthy. Though primarily interested in the speculative game of land transaction, they lined themselves with the frontier grants of the several colonial governments and gave their aid in pushing the wheel of civilization vigorously into the wilderness. Behind it all is the proprietary background as grantees of land upon certain conditions. Herein is the real significance of the speculative proprietors of the eighteenth century, for absenteeism is a typical condition of frontier

towns. Herein also lies the significance of the transition of the religio-social land policy to the commercial and speculative land policy of the eighteenth century.

## II

Much has been written about the origin of New England towns. The theory of Germanic origin traces the New England towns directly back to the Mark in the primeval forest of Germany; the primordial germ theory finds the New England towns already organized in England before the migration to New England; the parish theory defines them as the direct descendants of English parishes; the charter theory gives them a natural development following the outline given in the charter, a little colony within a large colony. All these theories may contain a truth of their own, but they never adequately explained the real origin of New England towns. The story of the New England proprietors shows no semblance to any one of these hypotheses. On the other hand, it goes to show plainly that New England towns were founded as a result of a simple business arrangement to meet the exigencies of the colonists amid the new environment.

In the first place, there was no definitely conceived plan at first in the founding of towns; in fact, it took over twenty years before any definite form of founding townships was systematically developed on the New England soil. In the second place, the "town" was at first nothing but a simple land community for the sole purpose of settlement and from it the political community gradually developed as a result of the separation of powers.

The land was given away in a tract by the general court to a group of individuals for the purpose of settlement. The tracts were settled in groups and each group was invested with an authority to manage its own affairs. At



first there was no unified plan in any settlement and even the system of land grants to groups, we have seen, had an evolution of its own. These original settlers or grantees became the proprietors of the land which was granted to them and they formed a simple agrarian community, bound by the common ownership of land. The first town meeting held was the meeting of these proprietors for the better ordering of their land and its divisions. The whole movement was not pre-conceived; it was a natural business process, an effort to possess, develop, and settle a tract of land. The diversity of interest followed on the heels of their settlement and an effort to bring about better management of their common life resulted in the separation of powers. The proprietors elected the selectmen to look after the political side of their town life, while they kept to themselves the exclusive jurisdiction over the town land.

The significance of the New England proprietors in this connection, thus, is their prior existence in comparison with that of the town and their absolute control of the land, their *raison d'être*. A township, in other words, was merely an arrangement in the first instance to define, though sometimes very vaguely, the territorial jurisdiction of a group of proprietors and at first there was no political significance attached thereto. Out of this simple business arrangement later arose the system of plantations and then of incorporated towns. "The Massachusetts town-meeting was in its origin the meeting of the body of proprietors of the corporation for the transaction of corporate affairs . . . in its character commercial and modern, and not feudal or primitive."<sup>1</sup>

As to the institution of proprietorship itself, the long

<sup>1</sup> Adams, *Genesis of Massachusetts Towns*, 205. It is only fair to add that he does not stop at this point; he goes so far as to attempt to show that the Massachusetts towns are based on the plan of the charter.

history of human experience at various stages in various countries constitutes one large background. It was practiced in some form or another from an early date in England and in continental Europe. This is particularly true with reference to the system of common fields.<sup>2</sup> But in this case also, though resemblance between the land communities of New England and those of the Old World is striking, one can not press the analogy too far. To say the least, there is no evidence of any conscious imitation of the Old World system on the part of the Puritan leaders or of any definitely outlined system at first, as has again and again been stated. At best one can point to the continuity of human experience and the projection of the past upon the present.

Whatever the custom with which they were acquainted, the Puritan settlers transplanted them to the new soil and developed them in harmony with the new spirit and the new environment. Men came together as neighbors and, being also necessitated by the importance of local church relations and the need of mutual protection, they settled together in groups. Herein is the key to the peculiar development of the New England land system. The group settlement resulted in group control over the land and it gradually developed into a system of proprietary land grants. The system at first existed only as a matter of course and it was not legally defined until the close of the seventeenth century. Then also, besides the system of common fields and common pasturage which practically died out by the opening of the eighteenth century, there was little in the New England system of proprietors which closely, or even roughly, resembled the kindred institutions of the Old World.<sup>3</sup>

<sup>2</sup> Eggleston, *op. cit.*, 22-23; Andrews, *River Towns of Connecticut*, 68-69.

<sup>3</sup> Enoch A. Bryan, *The Mark in Europe and America, a Review*

## III

The land speculation of the eighteenth century is a significant page in the history of the New England proprietors. We have seen that, from the second quarter of the century, the speculative mania had completely seized the land policy of Massachusetts, Connecticut, and New Hampshire. We have seen also how the proprietors came under the same influence and how they speculated upon frontier lands, both in and out of the New England colonies. As a result, the frontier and the unoccupied lands became the focus points of interest and the compact settlements of the early period were practically displaced by the scattered settlements over a wide area. The socio-religious character of the early Puritan towns gave way to the domination of the commercial element. Moreover, the current of Puritan class control was breaking at every turn of the outward-expanding waves, while the group consciousness and cooperative spirit gave way to the individual success and individualism of the frontier. The one material contribution of the speculative land policy, as we have already noted, was the occupation of the frontier district. Pressed by the increasingly dense population and lured by the speculative proprietors, the less prosperous, the ambitious, and the more adventurous in the old town population moved farther west and north. Away from the restraints of a solidified economic and social conditions of the older sections, the frontier afforded them the unrestricted life of a pioneer community. But they did not stop there; there were no geographical lines nor colonial boundary limits to the movement for expansion. The migratory tendency of the sturdy New Eng-

*of the Discussion on Early Land Tenure*, is an admirable attempt to show the fallacy of the Germanic origin of the New England towns and proprietors. The Chapter VII, on "*The Mark in America*," is particularly significant from this point of view.



land elements was already afoot and in full motion. Not only did they penetrate the New England frontiers farther northward, but they followed the revival of the western claims and settled on the Delaware and the Susquehanna, even reaching as far as the Carolinas, Georgia, and the south Mississippi Valley. Such is the background of the New England expansion and emigration westward which never stopped until, after the Revolutionary period, they penetrated the Ohio and Mississippi Valleys and beyond.<sup>4</sup>

Next to the migratory tendency of the New Englanders, the influence of the speculative proprietors was no less striking. The land speculation opened up a new avenue of activities to the shrewd land jobbers and of investment to capitalists of all sorts. It enriched many of the political leaders through their shares in the commercialized land grants. The speculative proprietors or their agents, as we have seen, created imaginary wealth and penetrated not only the New England colonies but also New York and New Jersey, and even England, in their effort to harvest profits from their lands. As against the radical pioneers on the frontiers, the well-to-do and more or less prosperous class on the sea board and in the old interior towns, disinclined to move away from their homes, became the breeding ground of speculators. But the good lands in the New England colonies were being rapidly occupied and exhausted and, by the close of the colonial period, these speculative proprietors had already fixed their eyes upon the more fertile and expansive western lands. The revival of the Connecticut claim to the western lands and the forma-

<sup>4</sup> One can see the direct influence of the New England land system in the movement connected with the promotion of the Ohio Company of 1786 and the settlement of Marietta, Ohio, the Scioto Company of 1802 by men from Granby, Conn., the Granville Company by people of Becket, Mass. Mathews, *Expansion of New England*, Chapters VI and VII.

tion of the Delaware Company and the Susquehanna Company marked only the beginning. Greater speculations over the western lands were yet to come under the leadership of the New England speculators. To these activities of the post-Revolutionary period the speculative proprietors of the New England colonies form a fitting background. Indeed, the ground was amply prepared for such great speculative undertakings as the Phelps-Gorham Purchase of 1786,<sup>5</sup> the formation of the Connecticut Gore Land Company in 1795,<sup>6</sup> the Ohio Company of 1787, the Scioto Purchase of 1787, the Connecticut Land Company of 1795, and numerous other similar enterprises.<sup>7</sup>

#### IV

The institution of common lands and proprietorship, in which are involved such valuable principles as reservation and conservation, supervision of settlements, absolute ownership of real property, small tract grants, and mutuality and neighborliness of community life, without doubt greatly helped to solve many difficult land problems in the early New England colonies, to facilitate the settlements of tillable areas, and also to add many a useful principle to the land policy of the United States later.<sup>8</sup> But that that system without modification was by no means perpetually adapted to the growing colonies in the later stages of their

<sup>5</sup> See O. Turner, *The History of the Pioneer Settlement of Phelps and Gorham's Purchase*. Rochester, N. Y., 1870.

<sup>6</sup> See, Albert C. Bates, *The Connecticut Gore Land Company*, in American Historical Association, *Annual Report*, 1898, 139-162.

<sup>7</sup> See for example, Mathews, *op. cit.*, Chapters VI-VII, *passim*. The speculation over the lands in Maine also continued to color Massachusetts politics and a series of townships were granted to speculative proprietors in the post-Revolutionary period. See Williamson, *History of Maine*, II, *passim*. The Bingham Purchase and the Knox-Duer speculation in Maine are the outstanding examples.

<sup>8</sup> Ford, *Colonial Precedents of Our National Land System*.



development was clearly shown through the various types of non-proprietors' cause. In other words, those controversies between the two opposing classes are particularly significant in pointing out how the established system becomes obsolete in a new period in which new ideas prevail; they are, indeed, conclusively illustrative of a conflict of ideas and ideals, old and new, conservative and radical, in a transition period. The system of common and undivided lands, in the first half century of colonizing experiments, for example, was a great and undeniable factor of development and served to increase harmony and mutuality among the first settlers by reason of being "common." But in the next half century, as the colonies developed rapidly, the people became more democratic, and new social philosophy began to occupy the minds of the masses, it became rather a "breeding ground" of inequality, jealousy, and antipathy, especially as regards individual rights and social position. Again, its feudatory nature of landlordism which was typified by the proprietorship, while at first it gave dignity to the Pilgrim Fathers and order to the new social life in the new world, was one of the things which could not have been woven into a democratic fabric of the New England colonies in the eighteenth century. This was particularly true in the light of the individualistic and democratic tendencies of the frontier towns and settlements where aversion to authority was most highly developed and the proprietary land system was almost impracticable. It may be said, then, that the controversies between the proprietors and the non-proprietors are significant in pointing out not so much the defects or faults of the land system as such, but rather the impracticability and inadequacy of that system in the new age with its new ideas and changed ideals.

On the other hand, that the existence of the institution of proprietorship and the consequent unrest among the non-proprietors had a strong impetus and a favorable effect



upon the actual settlement of the frontier towns is inevitable and can not be denied. Positively speaking, the proprietors in general constituted a capitalist class, particularly in the eighteenth century, and in that capacity they helped to push the adventures of the pioneers and frontiersmen through their strong encouragement. Herein lies, among other things, the real significance of the absentee proprietorship, the personnel of which has been pointed out as containing men of wealth and influence, living in eastern towns. Although this group did not actually face the labor and suffering of the frontier towns, nevertheless they contributed their share—an important share too—in bearing the invisible burdens of settlements. But the evils of absenteeism were equally great. Not only did they raise the difficult problem of delinquency, but they became the cause of unrest in many towns and the discontented inhabitants on this account often sought liberty and freedom by moving toward the frontier towns or wilderness.<sup>9</sup> These two causes some times acted together. Thus, in the settlement of Concord in 1726, for example, thirty-six of the one hundred settlers were emigrants from Haverhill and of these thirty-six only eleven were proprietors of the latter town.<sup>10</sup> The situation becomes clearer if we project this movement against the general background of discontentment among the non-proprietors and the consequent bitter controversies in Haverhill during the preceding years, especially during 1723-1725.<sup>11</sup>

The controversies between proprietors and non-proprie-

<sup>9</sup> See an interesting suggestion by Turner, *Frontier in American History, Chapter II*, ("The First Official Frontier of Massachusetts"), 56-65. In one of the conclusions he wrote: "Individualistic and democratic tendencies were emphasized both by the wilderness conditions and, probably, by the prior contentions between the proprietors and non-proprietors of the towns from which settlers moved to the frontier." *Ibid.*, 65.

<sup>10</sup> Chase, *History of Haverhill*, 274. <sup>11</sup> See above 128ff.

tors had shown above all else that there must exist no distinct privileged class in the New England colonies and that the removal of all such distinctions was one of the requisites for the wholesome coöperation of all inhabitants in fitting and accelerating the pioneer town life on a harmonious road of progress and prosperity. The whole principle underlying the controversies was, indeed, a defiance against the vestige, so to speak, of feudalism in America. It was a voice of the people restive under the restraint of the privileged and more conservative class, proud and domineering; it was a voice of democracy. With this view in mind, the result of controversies as a whole appear by no means encouraging; but the existence of the wide-spread demonstrations against proprietors more than helped to eliminate the class rule in the New England colonies and to lay a further background for the American Revolution. On the other hand, it was largely the landed proprietors who constituted the loyalists of the New England colonies and their lands were confiscated on that ground.<sup>12</sup> In fact, these controversies “afford a striking commentary on that agrarian revolution [referring to Old Rome] by which the common people of Massachusetts declared their independence of lordly townsmen in the commune long before the English Colonies in America threw off the tyranny of a privileged class of rulers.”<sup>13</sup>

In short, there were economic grievances within the circles of colonists themselves, among the common people against the domineering proprietors who controlled the colonial government, before that grievance was finally transposed into opposition on the part of the colonists against the home government.

<sup>12</sup> See for example, such cases as that of Samuel Waldo's heirs or of Francis Bernard's Mount Desert Island Grant.

<sup>13</sup> Adams, *Village Communities of Cape Anne and Salem*, 68, Note





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No attempt has been made to reach *all* existing proprietors' records. On the other hand, an effort has been made to select certain types according to the types of proprietors. Moreover, the Massachusetts proprietors' records have been used more extensively than those of the other states, since the Massachusetts proprietors preceded the kindred institution of the other colonies and they typified the general course of development.

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- Hatfield, Mass. *The Proprietors' Records for the Town of Hatfield, 1672-1736, and The Proprietors' Records of Bradstreet and Dennisons Farm, Hatfield, 1712-1735.* (Transcript, Northampton Registry of Deeds).
- Housatonnoc No. 1. *The Proprietors Book of Records for the Township No. 1 at Housatonnoc (later Tyringham), Book I., 1737-1762.* (Great Barrington Registry of Deeds).
- Housatonnoc No. 2. *The Proprietors' Records of New Marlborough, 1737-1790.* 2 Vols. (Transcript, Great Barrington Registry of Deeds).
- Housatonnoc No. 3. *The Proprietors' Book of Records, 1736/7-1792* (later Sandisfield, Mass.) (Great Barrington Registry of Deeds).
- Keene, N. H. *Proprietors' Records of Upper Ashuelot, 1734-1786.* 2 Vols. (Upper Ashuelot, 1734-1753; Keene, 1753-1786). (Town Clerk's Office).
- Kennebec Proprietors or Plymouth Company. *Records of Proprietors of the Kennebec Purchase, 1749-1822.* 5 Vols. (Maine Historical Society).
- Kennebec Proprietors or Plymouth Company *Submission of Settlers on Plymouth Company Land.* 8 Vols. (Kennebec Purchase, Vols. I-V; Waldo Claims, Vols. I-III). (Massachusetts Archives.)
- Kent, Conn. *Proprietors' Records, 1739-1782.* (Town Clerk's Office).
- Kittery, Me. *Proprietors' Records of Kittery, 1713-1782.* (Maine Historical Society).
- Lincolnshire Company or Waldo Patentees. *Records of the Lincolnshire Company and the Twenty Associates, 1766-1794.* (Massachusetts Historical Society).
- Lincolnshire Company or Waldo Patentees. *Lincolnshire Company Miscellaneous Papers, 1717-1802.* (Massachusetts Historical Society).

- Lower Housatonic. *Proprietors' Records of Lower Housatonic, 1722-1857*. 2 Vols. (Transcripts, Great Barrington Registry of Deeds).
- Madison, Conn. *Records of the Proprietors of "Hammonasset Quarter," Guilford, Now Madison, 1715-1841*. (Connecticut Historical Society).
- Marshfield, Mass. *Proprietors' Record of Marshfield: First and Second Divisions in the Major's Purchase*. (Transcript, Plymouth Registry of Deeds).
- Middleborough, Mass. *Proprietors' Records of Middleborough*. 2 Vols. (Transcript, Plymouth Registry of Deeds).
- Mount Washington, Mass. *Proprietors' Records of Mount Washington Propriety or "Tocconnock," 1778-1839*. (Transcript, Great Barrington Registry of Deeds).
- Narragansett No. 4. *Proprietors' Records of Narragansett No. 4 (Goffstown, N. H.), 1732-1778*. (Transcript, Northampton Registry of Deeds, Mass.).
- New Hartford, Conn. *Proprietors' Records, 1732-1809*. (Town Clerk's Office).
- Norfolk, Conn. *Norfolk Proprietors' Records, 1754-1856*. 2 Bks. (Bk. A on *Land Grants*; Bk. B. on *Proprietors' Meetings*). (Norfolk Savings Bank, Norfolk, Conn.).
- Northampton, Mass. *Proprietors' Records of the Town of Northampton*. (Northampton Registry of Deeds).
- Pejepscot Proprietors. *Records of the Pejepscot Proprietors*. 10 Vols. (Maine Historical Society).
- Pelham, Mass. *Proprietors' Records of Pelham, Massachusetts, 1738/9-1767*. (Northampton Registry of Deeds).
- Pemaquid Proprietors. *Pemaquid Proprietors' Book of Records*. 2 Bks., 1743-1774. Also "*Partition of Lands in Pemaquid Patent*" (1752-1763). (American Antiquarian Society, Worcester, Mass.).
- Plymouth, Mass. *Proprietors' Records of Plymouth*. (Transcript, Plymouth Registry of Deeds).
- Raymond, Me. *Proprietors' Records, 1734-1767*. (Maine Historical Society).
- Rehoboth, Mass. *Proprietors of Rehoboth: Meetings*, 1 Vol., and *Land Records and Deeds*, 5 Bks. (Taunton Registry of Deeds).



- Rochester, Mass. *Rochester Proprietors' Book of Records*, 4 Bks.; *Plans and Lands*, 4 Vols. and 7 Bks. (Plymouth Registry of Deeds).
- Salisbury, Conn. *Proprietors' Records, 1739-1835*. (Town Clerk's Office).
- Sanford, Me. *Proprietors' Records, 1717-1771*. (Maine Historical Society).
- Savoy, Mass. *Savoy, Massachusetts, Proprietors' Records, 1771-1799*. (Adams Registry of Deeds, Mass.).
- Saybrook, Conn. *Records of the Proprietors, Meetings of Potapauge Quarter*. (Connecticut State Library).
- Scarborough, Me. *Proprietors Records, 1720-1762*. (Maine Historical Society).
- Sharon, Conn. *Proprietors' Records, 1738-1884*, 5 Vols. (Town Clerk's Office).
- Springfield, Mass. *The Proprietors' Records of the Inward Commons of Springfield, 1713-1813*, 3 Vols.; *The Proprietors' Records of the Outward Commons of Springfield, 1699-1799*, 2 Vols. (Transcript, Springfield Registry of Deeds).
- South Hadley, Mass. *Proprietors' Records of South Hadley, 1719-1835*. (Transcript, Northampton Registry of Deeds).
- Suffield, Conn. *Proprietors' Records of Suffield, 1716-1821*, 2 Vols. (Town Clerk's Office).
- Taunton, Mass. *Old Proprietary Records: North Purchase*, 7 Vols.; *Taunton*, 6 Vols. (Transcript, Taunton Registry of Deeds).
- Union, Conn. *Records of the Original Proprietors of the Town of Union, Connecticut*. (Transcript by Charles Hammond, 1866, in Connecticut State Library).
- Upper Housatonnock. *The Proprietors' Book of Records for Upper Housatonnock, so called, alias Upper Sheffield*. (Great Barrington Registry of Deeds).
- Windham, Me. *Proprietors' Records, 1734-1814*. Also Two Books of Land Records. (Maine Historical Society).

## B. PRINTED

- Buxton, Me. *Records of the Proprietors of Narraganset Township, No. 1, now the Town of Buxton, York*



- County, Maine, 1733-1811.* Edited by Cryus Woodman. Concord, N. H., 1871.
- Cambridge, Mass. *Proprietors' Records: the Registered Book of the Lands and Houses in the "New Towne" and the Town of Cambridge . . . 1635-1829.* Cambridge, Mass., 1896.
- Charlestown, Mass. *Charlestown Land Records, 1638-1802.* Boston Record Commissioners' Report, Vol. III, 2nd Ed., Boston, 1883.
- Colchester, Conn. *Extracts from the Records of Colchester . . .* Hartford, Conn., 1864. *Proprietors Records* are scattered throughout the book, covering the period 1713-1730.
- Enfield, Conn. *Commoners' Book. Book A, 1711-1808,* in Allen, *History of Enfield*, I: 680-912. Also *Committee Book and Land Grants, Ibid*, respectively, I: 60-135 and 1: 136-280. Lancaster, Pa., 1900.
- Hartford, Conn. *Original Distribution of the Lands in Hartford among the Settlers, 1639.* Edited by A. C. Bates. Connecticut Historical Society, *Collections*, Vol. XIV. Hartford, 1912.
- Lancaster, Mass. *The Early Records of Lancaster, Massachusetts, 1643-1725* includes the *Proprietors' Records for 1716/7-1724/5*, pp. 176-211. Lancaster, 1884.
- Lebanon, N. H. *Proprietors' Records of Lebanon, 1761-1774*, in C. A. Downs, *History of Lebanon*, pp. 8-43. Concord, N. H., 1908.
- Londonderry, Windham, and Derry, N. H. *Early Records of Londonderry, Windham, and Derry, N. H., 1719-1762.* 2 Vols. Manchester Historical Association, *Collections*, Vols. V-VI. Edited by G. W. Browne. Manchester, N. H., 1908, 1911. *Proprietors' Records* are scattered.
- Lunenburg, Mass. *The Proprietors' Records of the Town of Lunenburg, Massachusetts . . . 1729-1833.* Fitchburg, 1897.
- Manchester, Mass. *The Commoners' Records in Town Records of Manchester*, 2 Vols. Salem, 1889-1891.
- Masonian Proprietors. *Records of the Meetings of the Masonian Proprietors, 1748-1846.* Edited by A. S. Batchellor. New Hampshire State Papers, Vol. XXIX Pt. 2, pp. 400-644.

- Mendon, Mass. *The Proprietors' Records of the Town of History of Pelham*, Amherst, Mass., 1898.
- New Gloucester, Me. *Records of the Proprietors of New Gloucester . . .* Maine Historical Society, *Collections*, (1897), 2nd Series, Vol. VIII: 263-288. Compiled by J. W. Penny.
- Pelham, Mass. *Pelham Proprietors' Records, 1738-1743, and Town Records, 1743-1897*. In C. D. Parmenter, *History of Pelham*, Amherst, Mass., 1898.
- Pejepscot Proprietors. *The Pejepscot Proprietors: Records and Papers to 1766*. Documentary History of Maine, XXIV: 199-464. Edited by J. P. Baxter. Portland, 1916.
- Pemaquid Proprietors. *Papers relating to Pemaquid . . .* (From Original Documents in the State Department of New York). Albany, 1856. Also in Maine Historical Society, *Collections*, 1st Series, V: 1-139.
- Peterborough, N. H. "*The Records of the Original Proprietors*" of Peterborough, Appendix to A. Smith, *History of the Town of Peterborough*. Boston, 1876.
- Roxbury, Mass. *Roxbury Land Records and Church Records*. Boston Record Commissioners, *Report*, VI. 2nd ed. Boston, 1884.
- Salem, Mass. *The Records of the Salem Commoners, 1713-1739*. Edited by G. F. Dow. Salem, 1903.
- Sowams. *The Records of the Sowams Propriety*. In T. W. Bicknell, *Sowams: with Ancient Records of Sowams and Parts Adjacent*, pp. 33-122. (1653-1797). New Haven, 1908.
- Waterbury, Conn. *Proprietors' Records of the Town of Waterbury, Connecticut, 1677-1761*. Transcribed and edited by K. A. Prichard. Mattatuck Historical Society, 1911.
- Watertown, Mass. *Watertown Proprietors' Records in Watertown Records*, Vol. I, pp. 147-186. Watertown, 1894.
- Worcester, Mass. *Records of the "Proprietors" of Worcester, Massachusetts*. Edited by F. P. Rice. Worcester Society of Antiquity, *Collections*, Vol. III. Worcester, 1881.



## II. TOWN RECORDS

The town records were useful in tracing the relation between the proprietors and the town. Moreover, in the earlier years in the older towns, the proprietors' votes were indiscriminately entered in the town records and the town votes give light to the early development of proprietors. The town records, also, very often give general background to the proprietors' activities. Where the system of common fields existed the town regulated the troublesome question of fencing; even the common and undivided lands were sometimes subject to a similar regulation.

The guides already named also serve for the town records, both printed and manuscript. The list given below is only a selected list and therefore incomplete. I have used only the printed town records.

Amherst, Mass. *Records of the Town of Amherst, 1735-1788*. Edited by J. F. Jameson. Amherst, 1884.

Boston, Mass. *Boston Records and the Book of Possessions*. Boston Record Commissioners' Report, Vol. I. Boston, 1881.

Boston, Mass. *Records of Boston Selectmen, 1701-1715*. Boston Record Commissioners' Report, Vols. XI, XIII, XV, XVII, XIX, XX, XXII. Boston, 1884.

Boxford, Mass. *Boxford Town Records, 1685-1706*. Essex Institute Historical Collections, XXXVI: 41-103. Copied by S. Perley. Salem, 1910.

Braintree, Mass. *Records of the Town of Braintree, 1640-1793*. Edited by S. A. Bates. Randolph, Mass., 1886.

Bridgewater, Mass. *Town Records of Bridgewater, Massachusetts*. Brockton, 1889.

Brookfield, Mass. *Brookfield Records, 1686-1783*. In J. H. Temple, *History of North Brookfield*. North Brookfield, 1887.

Cambridge, Mass. *The Records of the Town of Cambridge, Massachusetts, 1630-1703*. Cambridge, 1901.

Concord, Mass. *Concord Town Records, 1732-1820*. Concord, 1894.

Dedham, Mass. *Early Records of the Town of Dedham, Massachusetts*, 4 Vols. Edited by Dow Gleason Hill. Dedham, 1892.



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- Derby, Conn. *Town Records of Derby, Connecticut, 1655-1710.* Derby, 1901.
- Dorchester, Mass. *Dorchester Town Records, 1632-1691.* Boston Record Commissioners' Report, Vol. IV, 2nd Ed. Boston, 1883.
- Dudley, Mass. *Town Records of Dudley, Massachusetts, 1732-1794.* 2 Vols. Pawtucket, R. I., 1895.
- Duxbury, Mass. *Old Records of the Town of Duxbury, Massachusetts, 1642-1770.* Copied by Geo. Netheridge. Plymouth, 1893.
- Fitchburg, Mass. *The Old Records of the Town of Fitchburg, Massachusetts.* 4 Vols. Compiled by W. A. Davis. Fitchburg, 1893.
- Groton, Mass. *Early Records of Groton, Massachusetts, 1662-1707.* Edited by S. A. Green. Groton, 1880. (*Proprietors' Records*, pp. 143-185).
- Hanover, N. H. *Records of the Town of Hanover, New Hampshire, 1761-1818.* Vol. I. Hanover, 1905.
- Ipswich, Mass. *Ancient Records of the Town of Ipswich.* Edited by G. A. Achefield. Vol. I., 1634-1650. Ipswich, 1899.
- Manchester, N. H. *Early Records of the Town of Derryfield, New Manchester, New Hampshire,* 5 Vols. Vol. I., 1751-1782. Edited by G. W. Browne. Manchester Historical Association, *Collections*, VIII-XII.
- Nantucket, Mass. *Papers relating to the Island of Nantucket.* Compiled by F. B. Hough. Albany, N. Y., 1856.
- Oxford, Mass. *The Records of Oxford, Mass.* Edited by Mary de Witt Freeland. Albany, N. Y., 1894.
- Plymouth, Mass. *Records of the Town of Plymouth, 1636-1783.* 3 Vols. Edited by W. T. Davis. Plymouth, 1889, 1892, 1903.
- Portsmouth, R. I. *Early Records of the Town Portsmouth, 1639-1697.* Providence, 1901.
- Providence, R. I. *Early Records of the Town of Providence.* 20 Vols. Providence, 1892-1909.
- Rowley, Mass. *Rowley: the Early Records of the Town of Rowley, Mass., 1639-1672.* Rowley, 1894.
- Salem, Mass. *Salem Town Records, 1634-1680,* 2 Vols. *Essex Institute Historical Collections*, Vols. IX, IXL-XLII, XLVIII-IL. Edited by N. O. Howes.

- Springfield, Mass. *First Century of the History of Springfield: the Official Records, 1636-1736*. Vol. I., edited by H. R. Burt. Springfield, 1898.
- Standish, Me. *Records. Maine Historical and Geneological Recorder*, No. 4, 1888, V: 233-239; No. 2, 1889, VI: 359-361.
- Suffield, Conn. *Documentary History of Suffield . . . 1660-1749*. Edited by H. S. Sheldon. Springfield, Mass., 1879.
- Tisbury, Mass. *Records of the Town of Tisbury, Massachusetts, 1669-1864*. Edited by W. S. Swift and J. W. Cleveland. Boston, 1903.
- Topsfield, Mass. *Town Records of Topsfield, Massachusetts*, Vol. I., 1659-1739. Topsfield, 1917.
- Watertown, Mass. *Watertown Records*. 4 Vols. Prepared by the Historical Society of Watertown. Watertown, 1894-1906.
- Weston, Mass. *Town of Weston: Records of the First Precinct, 1744-1754, and of the Town, 1754-1803*. Boston, 1893. Also, *Town of Weston, Records, 1746-1826*, 2 Vols., Boston 1893-1894. Edited by M. F. Piere.
- Worcester, Mass. *Early Records of the Town of Worcester, 1722-1753*. 2 Books. Edited by F. P. Rice. Worcester Society of Antiquity, *Collections*, Vol. II. Worcester, 1879-1880.

### III. COLONIAL RECORDS, DOCUMENTS, AND LAWS

#### A. MANUSCRIPT

Massachusetts Archives: (The general description of the Archives and the contents are given in John H. Edmonds, *The Massachusetts Archives*, Worcester, Mass., 1922.)

- (1) *The Council Records*. The manuscript executive and judicial records of the governor and council. 21 Vols., 1692-1777. Also for 1650-1656, 1686-1687.
- (2) *The Council Minutes*. The manuscript legislative records of the governor and council, as the upper

house of the provincial legislature. Vols. 81-86 (1689-1775).

(3) *The House Journals*. (See below).

(4) *The Miscellaneous Collections*. Of these the most useful were *Lands* (Vols. 45-46) and *Towns* (Vols. 112-118). The following were also useful: *Petitions* (Vols. 105, 303), *Letters* (Vols. 51-56), *Colonial* (Vols. 1-4), *Legislative*, (Vols. 48-50).

(5) *The Miscellaneous Records. Book of Eastern Claims, 1674-1720; Kennebec Purchase, Submission of Settlers; Land Agents' Accounts; Waldo Claims, Submission of Settlers.*

(6) *The Maps and Plans*.

Connecticut Archives: (The general description is found in the *Report of the State Librarian to the Governor*, Hartford, Conn., 1917.)

*Towns and Lands*, 10 Vols., 1629-1789.

*Industry*, 2 Vols., 1708-1789.

*Susquehanna Settlers*, 1 Vol., 1755-1796.

*Bowdman Papers*.

Suffolk Court Files. The early Court Records in the Office of the Massachusetts Supreme Judicial Court, Suffolk County Court House, Boston. (See *The Catalogue of Records and Files in the Office of the Clerk and the Supreme Judicial Court for the County of Suffolk*. Boston, 1890.)

## B. PRINTED

### 1. Massachusetts.

*Acts and Resolves, Public and Private, of the Massachusetts Bay, 1692-1780*, in 19 Vols. Boston, 1869-1922.

(1) *Province Laws, 1692-1780*, Vols. I-VI.

(2) *Resolves, etc., 1692-1780*, Vols. VII-XIX.

(3) *Town Charters, 1692-1714*, Vol. XIX.

*Journals of the House of Representatives of Massachusetts.*

(1) The Massachusetts Historical Society has published 4 volumes covering: I: 1715-1717; II: 1718-1720; III: 1721-1722; IV: 1722-1723. Compiled by W. C. Ford. Boston, 1919-21-22-23.



- (2) For the years 1730-1776, the file of the Massachusetts Archives is complete. For the years between 1722 and 1730, one has to go to several places. See W. C. Ford, *Bibliography of the Massachusetts House Journals, 1715-1776*, Publication of the Colonial Society of Massachusetts, *Collections*, IV: 201-289. Boston, 1910.

*The Colonial Laws of Massachusetts*. Reprinted from the Edition of 1660, with the Supplements to 1672. Boston, 1889. This collection and the Province Laws above are the easiest available form. For other years, see W. C. Ford and A. Mathews, *Bibliography of the Laws of Massachusetts Bay, 1641-1776*, Publication of the Colonial Society of Massachusetts, *Collections*, IV: 291-480. Boston, 1910.

*Land Warrants issued under Andros, 1687-1688*. Edited by J. H. Tuttle. Publication of the Colonial Society of Massachusetts, Vol. XXI, *Transactions*, 1919, pp. 292-363. Boston, 1920.

*Massachusetts Royal Commissions, 1681-1774*. Publication of the Colonial Society of Massachusetts, *Collections*, II. Edited by Albert Mathews. Boston, 1913.

*Record of the Council for New England*. American Antiquarian Society, *Proceedings*, April 24, 1867. Cambridge, 1867.

*Records of the Governor and Company of the Massachusetts Bay in New England, 1628-1686*. Edited by N. B. Shurtleff. 5 Vols. Boston, 1853-1854.

*Records of the Colony of New Plymouth in New England, 1620-1692*. Edited by D. P. Shurtleff, etc. 12 Vols. Boston, 1855-1861.

*Records and Files of the Superior Court of Judicature. . . .* The Case of Haverhill Proprietors vs. Benjamin Barker of Andover, 1740-1745. Publication of the Colonial Society of Massachusetts, *Transactions*, Vol. V. (1897-8), pp. 5-26. Edited by John Noble.

## 2. Maine:

*Documentary History of the State of Maine*. Maine Historical Society, *Collections*, 2nd Series, 22 Vols. (State appropriation). Portland, 1869-1910.

- (1) *Baxter Manuscripts*, containing miscellaneous materials, both official and private, on the history of Maine under the Massachusetts jurisdiction. 19 Vols. (IV-VI, IX-XXIV). They contain numerous extracts of proprietors' records, petitions involving proprietors of several towns, and materials on legal cases.
  - (2) *Farnham Papers, or Documents relating to the Territorial History of Maine, 1603-1871*, 2 Vols. (VII-VIII), edited by Mary F. Farnham. These are particularly valuable for patents, deeds and other materials bearing upon proprietors.
  - (3) *Trelawey Papers, etc.* 1 Vol. (III).
- Report of the Commissioners to investigate the Causes of the Difficulties in the County of Lincoln, with the Documents in Support thereof.* Boston, 1811. (Massachusetts Historical Society and Massachusetts Archives).
- York Deeds, 1642-1726.* 11 Vols. Portland, 1887-1896.

### 3. New Hampshire:

- Acts and Laws of His Majesty's Province of New Hampshire in New England: with Sundry Acts of Parliament, 1696-1771.* Portsmouth, 1771.
- New Hampshire State Papers: Documents and Papers relating to the Province and State of New Hampshire, 1623-1800.* Edited by N. Bouton and others. 31 Vols. Concord, 1867-1907.
- (1) *Provincial Papers, 1603-1776*, Vols. I-VII, XVIII, XIX. These contain the Journals of the General Assembly, the Records of the Council, the Journals of the Council and Assembly, and numerous other materials, both official and private.
  - (2) *State Papers, 1776-1792*, Vols. VIII, XX-XXII.
  - (3) *Town Papers, 1638-1800*, Vols. IX, XI-XIII.
  - (4) *Town Charters*, Vols. XXIV-XXIX. These form a most convenient collection of all town charters issued by Massachusetts, New Hampshire, and the Masonian Proprietors in New Hampshire and Vermont. The arrangement is as follows:

- (a) Town Charters I (XXIV) contains the Massachusetts Grants in New Hampshire with a complete legislative document and the New Hampshire town grants, Acworth to Exeter. Appendix contains additional materials on the Massachusetts grants.
- (b) Town Charters II (XXV) contains New Hampshire charters, F to W. Appendix contains some materials on the first planting of New Hampshire.
- (c) Town Charters III (XXVI) contains the New Hampshire grants in what is now Vermont.
- (d) Town Charters IV-VI (XXVII-XXIX) contains the Masonian Charters and documents. First two volumes contain town charters and the last volume materials in general, including minutes of their meetings.

#### 4. Connecticut:

*Acts and Laws of His Majesty's Colony of Connecticut in New England.* Editions of 1715 and 1769, with supplement to 1779. New London, 1779.

*New Haven Colonial Records:*

(1) *Records of the Colony and Plantation of New Haven.* Copied by C. J. Hoadly. Hartford, 1857.

(2) *Records of the Colony or Jurisdiction of New Haven, 1633-1655.* Hartford, 1858.

*Public Records of the Colony of Connecticut, 1636-1776.* Compiled by J. H. Trumbull and C. J. Hoadly. 15 Vols. Hartford, 1850-1890.

*Documents relating to the Connecticut Settlement in the Wyoming Valley.* Edited by W. H. Egle. Pennsylvania Archives, 2nd Series, Vol. XVIII. Harrisburg, 1890.

*Reports on the Laws of Connecticut . . . by Francis Fane.* Edited with an introduction by C. M. Andrews. New Haven, 1915. List of laws reported to the home government from time to time with Fane's comments.



## 5. Rhode Island :

*Acts and Laws of His Majesty's Colony of Rhode Island and Providence Plantation in New England.* Edition of 1767, printed by Samuel Hall, New Port.  
*Records of the Colony of Rhode Island and Providence Plantation, in New England, 1636-1792.* Compiled by J. R. Bartlett. 10 Vols. Providence, 1856-1865.  
*Documentary History of Rhode Island*, edited by H. M. Chapin. 2 Vols. Providence, 1916-1919.

## 6. Miscellaneous :

*Charlemagne Tower Collection of American Colonial Laws.* Index is published by the Pennsylvania Historical Society, Philadelphia, 1890, under the above title. An important reservoir of American colonial laws.

*Documents relative to the Colonial History of the State of New York.* Edited by E. B. O'Callaghan and B. Fernow. 15 Vols. Albany, 1856-1887. These contain valuable materials on the New York-New Hampshire controversy over the Vermont territory.

*Documentary History of the State of New York.* Edited by E. B. O'Callaghan. 4 Vols. Albany, 1849-1851. "Papers relating to the Difficulties between New York and New Hampshire," Vol. IV, No. 14, pp. 529-1034.

*Vermont State Papers: being a Collection of Records and Documents connected with the Assumption and Establishment of Government by the People of Vermont . . .* Compiled by Wm. Slade, Jr. Middlebury, 1823. "Documents relating to the Controversy with New York and New Hampshire," pp. 8-155.

## IV. BRITISH OFFICIAL DOCUMENTS

The New England proprietors, as we have seen, were intra-colonial in their activities and these over-sea materials were not as important as the other materials already enumerated. Nevertheless, they formed an important source of information on many occasions, particularly with refer-

ence to the larger problem of imperial control and colonial appeals.

The following guides were useful in this branch of investigations. *Guide to Items relating to American History in the Reports of the English Historical Manuscript Commission and their Appendices*. American Historical Association, *Annual Report*, 1898. C. M. Andrews, *Guide to Materials for American History to 1783 in the Public Record Office of Great Britain* . . . 2 Vols. Washington, 1912-14. C. M. Andrews and F. G. Davenport, *Guide to the Manuscript Materials for the History of the United States to 1783, in the British Museum, in Minor London Archives, and in the Libraries of Oxford and Cambridge*. Washington, 1908.

#### A. MANUSCRIPT

*Board of Trade Journals, 1675-1782*. 90 Vols. Transcripts of the Original Manuscripts in the Public Record Office of England. London, 1898. (Pennsylvania Historical Society).

British Museum, *King's Manuscripts*, 206. Transcript. State of Manufacturing and Mode of Granting Land, Fees of Officers, etc., in America. Answers to Circular Letter from Lords of Trade, August 1, 1766. (Library of Congress).

#### B. PRINTED

*Acts of the Privy Council of England, Colonial Series*. Edited by W. L. Grant and J. Munro. 6 Vols. 1613-1766. London and Hereford, 1908-1912.

*Calendar of State Papers, Colonial Series, 1574-1708*, 22 Vols. London and Hereford, 1880-1916.

*Lists of Reports and Representations of the Plantation Councils, 1660-1674, the Lords of Trade, 1675-1696, and the Board of Trade, 1696-1782, in the Public Record Office*. By C. M. Andrews. American Historical Association, *Annual Report*, 1913, I: 321-406.

*Federal and State Constitutions, Charters and Other Organic Laws, 1492-1908*. 7 Vols. Edited by F. N. Thorpe. Washington, 1909. Colonial Charters and Patents are most conveniently gathered there in full.



## V. CORRESPONDENCES, DIARIES, MEMOIRS, JOURNALS, ETC.

These were useful, among other things, for three reasons in the present study. They (1) give light on the official policy of the governors and their officials, (2) furnish contemporary opinions concerning the proprietors' activities, and (3) reveal inside workings of the proprietors themselves, which can not be obtained through their records. They are all printed.

Belcher, Jonathan. *The Belcher Papers*. Massachusetts Historical Society, *Collections*, 6th Series, Vols. VI-VII. 2 Vols. Edited by C. C. Smith. Boston, 1893-4. *Additional Belcher Letters, 1732-1749* are in Massachusetts Historical Society *Proceedings*, XLIV (1910): 189-212.

Bradford, William. *History of Plymouth Plantation*. Edited by W. T. Davis, in Jameson's "Original Narratives of Early American History." N. Y., 1908.

*Calendars of Papers and Records relating to the Land Bank of 1740*. Edited by A. McF. Davis. Publication of the Colonial Society of Massachusetts, *Collections*, IV: 1-200. Boston, 1910. They comprise the materials found in the Massachusetts Archives and the Suffolk Court Files.

Colden, Cadwalder. *The Colden Letter Book*. 2 Vols. (Vol. I, 1760-1765; Vol. II, 1765). New York Historical Society, *Collections*, 1876.

Colden, Cadwalder. *The Letters and Papers of Cadwalder Colden*. 2 Vols. New York Historical Society, *Collections*, Vols. L-LI. New York, 1918.

Connecticut Historical Society, *Collections*, contain the following useful papers of the several governors:

(1) *Talcott Papers, 1724-1741*. Edited by M. K. Talcott. Vols. IV-V. Hartford, 1892-1896.

(2) *Law Papers, 1741-1750*. Vols. XI-XIII-XV. Hartford, 1907-14.

(3) *Walcott Papers, 1750-1754*. Edited by A. C. Bates. Vol. XVI. Hartford, 1916.

(4) *Fitch Papers, 1754-1766*. Edited by A. C. Bates. Vols. XVII-XVIII. Hartford, 1918-1920.



- (5) *Pitkin Papers, 1766-1769*. Edited by A. C. Bates. Vol. XIX. Hartford, 1921.
- Correspondence of the Colonial Governors of Rhode Island, 1723-1775*. 2 Vols. Edited by G. S. Kimball. National Society of the Colonial Dames of America in the State of Rhode Island and Providence Plantation. Boston, 1902-1903.
- Correspondence of the Connecticut Governors with the British Government, 1755-1758*. Connecticut Historical Society, *Collections*, Vol. I., 1860.
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- Harris, William. *Harris Papers*. Rhode Island Historical Society, *Collections*, Vol. X. I. B. Richman has an introduction on "The Land Controversy of William Harris." Providence, 1902.
- Hempstead, Joshua. *Diary of Joshua Hempstead, of New London, Connecticut, 1711-1758*. Edited by E. E. Rogers. New London County Historical Society, *Collections*, Vol. I. New London, 1901. Hempstead was proprietor of several towns.
- Letters from English Kings and Queens to the Governors of the Colony of Connecticut together with the Answers thereto from 1635 to 1749*. Collected by R. R. Hinman. Hartford, 1836.
- Land Controversies in Maine*. Documents from the Court Files. Edited by John Noble. Publication of the Colonial Society of Massachusetts, VI, *Transactions*, 1899-1900, pp. 11-59.
- Leverett, Charles Edward. *A Memoir, Biographical and Genealogical, of Sir John Leverett, Governor of Massachusetts, 1673-1679; of Hon. John Leverett . . . President of Harvard College*. Boston, 1856. John Leverett was responsible in reviving and organizing the Lincolnshire Company.
- Mason, John. *Captain John Mason, the Founder of New Hampshire*. Edited by J. W. Dean. Publication of Prince Society. Boston, 1887. It contains Memoir, Charters, Letters and Documents.
- Massachusetts Historical Society, *Collections*, contain, among other things, the following useful papers:

- (1) *Sewall Papers, 1674-1729*. 3 Vols. 5th Series. Vols. V-VII. Also *Sewall Letter Book, 1686-1729*, 2 Vols. 6th Series, Vols. I-II.
  - (2) *Winthrop Papers*, 5th Series, Vols. IV-VI-VII-VIII; 6th Series, Vols. III, V.
  - (3) *Trumbull Papers*. 4 Vols. 5th Series, Vols. IX-X; 7th Series, Vols. II-III.
- Randolph, Edward. *Edward Randolph: His Letters and Official Papers*, etc. Edited by R. N. Toppan. 7 Vols. Publication of Prince Society. Boston, 1898-1899.
- Shirley, William. *Correspondence of William Shirley, Governor of Massachusetts and Military Commander in America, 1731-1760*. 2 Vols. Edited by C. H. Lincoln. New York, 1912.
- Smith, Rev. Thomas. *Journals of the Rev. Thomas Smith and the Rev. Samuel Deane*. Edited by William Willis. Portland, 1849. Thomas Smith was a proprietor of Falmouth, Me.
- Stiles, Ezra. *Extracts from the Itineraries and Other Miscellanies of Ezra Stiles, 1755-1794, with a Selection from his Correspondence*. Edited by F. B. Dexter. New Haven, 1916. Stiles was proprietor of several towns in New England.
- Winthrop, John. *History of New England*. Edited by J. K. Hosmer, in Jameson's "Original Narratives of Early American History." 2 Vols. N. Y., 1908.
- Wolcott, Roger. *Roger Wolcott's Memoir*. Connecticut Historical Society, *Collections*, Vol. III. Roger Wolcott was a notable land speculator of the early eighteenth century.

## VI. CONTEMPORARY PAMPHLETS AND BROADSIDES

### 1. Collections:

- Andros Tracts, The. Being a Collection of Pamphlets and Official Papers*. 3 Vols. Publication of Prince Society. Boston, 1868-1874.
- Broadside, Ballads, &c. printed in Massachusetts, 1639-1800*. Edited by W. C. Ford. Massachusetts Historical Society, *Collections*, Vol. LXXV. Boston, 1922.



*Colonial Currency Reprints, 1682-1751.* 4 Vols. Edited by A. M. Davis. Publication of Prince Society. Boston, 1910-11.

2. On Eastern Claims:

*A Short Narrative on the Claim, Title, and Right of the Heirs of the Honourable Samuel Allen, Esq.; Deceased, to the Province of New Hampshire in New England: Transmitted from a Gentleman in London, to her friend in New England.* Boston, 1728. London, (July 2, 1728. (Massachusetts Historical Society).

*A Patent for Plymouth in New England To Which Is annexed Extracts from the Records of that Colony.* Boston, 1751. (Massachusetts Historical Society).

Johnston, Thomas. *Maps of Kennebec.* Boston, 1752. (Massachusetts Historical Society).

*Remarks on the Plan and Extracts of Deeds lately published by the Proprietors of the Township of Brunswick. Agreeable to their Vote of January 4th, 1753.* Boston, 1753. (Massachusetts Historical Society).

Plymouth Company. *Meeting of the Proprietors of the Kennebec Purchase from the late Colony of New-Plymouth, on the 12th of January, 1753. Votes.* (Harvard College Library).

*An Answer to the Remarks of the Plymouth Company, or (as they call themselves) the Proprietors of the Kennebec Purchase from the late Colony of New-Plymouth, published by Virtue of their Vote of 31st of January Last; . . .* Boston, 1753. (Massachusetts Historical Society).

*A Defense Of the Remarks of the Plymouth Company on the Plan and Extracts of Deeds, published by the Proprietors of the Township of Brunswick. Being a Reply to their Answer to said Remarks lately published, according to the Vote of March 28, 1753.* Boston, 1753. (Massachusetts Historical Society).

*The Award and final Determination of the Referees respecting the Claims of the Proprietors of the Kennebec Purchase from the late Colony of New-Plymouth, and the Company holding under Clark*



*and Lake, relating to the Lands on each Side of Kennebec River.* Broadside. Boston, 1757. (Massachusetts Historical Society).

*A Brief State of the Title of the Province of Massachusetts-Bay to the Country between the Rivers Kennebec and St. Croix.* Boston, 1763. Appendix to the Massachusetts House Journal, 1762.

*A Strange Account of the Rising and Breaking of A Great Bubble.* Boston, 1767. First printed in 1691? (Massachusetts Historical Society).

*Laws as to Grants in Eastern Parts.* (Boston Public Library).

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*A Copy of a Relation—Nantucket Land Title . . .* New Port, 1770. (Massachusetts Historical Society).

Gale, Benjamine. *The Present State of the Colony of Connecticut.* New London, 1755. (Massachusetts Historical Society).

*The State of the Land said to be Once within the Bounds of the Charter of the Colony of Connecticut, west of the Province of New York, considered. By the Public's Humble Servant.* N. Y., 1770. (Pennsylvania Historical Society).

*An Examination of the Connecticut Claim to the Lands in Pennsylvania, with an Appendix containing Extracts and Copies taken from Original Papers.* Jared Ingersoll. Philadelphia, 1774. (Pennsylvania Historical Society).

*The Report of the Commissioners appointed by the General Assembly of Connecticut to Treat with the Proprietors of Pennsylvania respecting the Boundary of this Colony.* Norwich, 1774. (Pennsylvania Historical Society).

Bidwell, Barnabas. *The Susquehanna Title Stated and Examined.* Catskill, N. Y., 1796. (Pennsylvania Historical Society).

## VII. NEWS PAPERS

News papers were useful solely for the advertisements. Numerous notices calling the proprietors' meetings, notify-

ing the absentee proprietors the charges due or neglected settlement, and advertising for sale the delinquent proprietors' lots are found in plenty in the eighteenth century news papers. They have been extremely important in checking up the speculative activities of the proprietors. There also appeared proprietors' advertisements to procure settlers; this was particularly true with the Great Proprietors, like the Kennebec Purchase Proprietors.

I confined myself to the Boston, Hartford, and New York papers. The following two guides were extremely useful. M. F. Ayer, *Check-list of Boston Newspapers, 1704-1780*. With bibliographical notes by Albert Mathews. Publication of the Colonial Society of Massachusetts, *Collections*, IX. Boston, 1907. *Check List of Newspapers and Official Gazette in the New York Public Library*, compiled by D. C. Hoskell. N. Y., 1915.

*The Boston News-Letter, 1704-1776.*

*The Boston (Weekly) Post Boy, 1734-1775.*

*The Boston Evening Post, 1735-1775.*

*The Boston Gazette, 1719-1780.*

*The New England Courant, 1721-1726.*

*The New England Weekly Journal, 1727-1741.*

*The Independent Advertiser, 1748-1749*

*The Boston Chronical, 1767-1770.*

*The Massachusetts Gazette, 1768-1769.*

*The Connecticut Courant, 1764-1770.*

*The New York Gazette, 1725-1769.*

*The New York Mercury (Gaine's), 1761-1765.*

*The New York Gazette or Weekly Post Boy, 1743-1769.*

## DIVISION B.

### I. ON LAND SYSTEM

#### 1. General:

Bryan, Enoch Albert. *The Mark in Europe and America: a review of the discussion on early land tenure*. Boston, 1893.

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Fustel de Coulanges. *The origin of property in land*. English translation by Margaret Ashley; edited by



- W. J. Ashley. 3rd ed. London, 1904. (1st ed. 1891).
- Lapsley, G. T. *The County Palatinate of Durham*. Harvard Historical Studies. N. Y., 1900.
- Laveleye, Emile De. *De la propriété et des formes primitives*. 5th ed. Paris, 1901. (1st ed. 1874).
- Maurer, Georg von. *Einleitung zur Geschichte der Mark-Verfassung*. 1854.
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- Nasse, Erwin. *On the agricultural community of the Middle Ages, and inclosures of the sixteenth century in England*. English translation by H. A. Ouvry. 2nd ed. London, 1872.
- Ross, Denman Waldo. *The early history of land-holding among the Germans*. Boston, 1883.
- Scrutton, Thomas Edward. *Commons and common fields*. Cambridge, England, 1887.
- Seebohm, Frederick. *The English village community: an essay in economic history*. 4th ed. Revised. London, 1896.
- Vinogradoff, Paul. *Villainage in England*. Oxford, 1892.

## 2. New England:

- Adams, Herbert B. *Village community of Cape Anne and Salem*. Johns Hopkins University, *Studies in History and Political Science*. Vol. I, Nos. 9-10.
- Andrews, Charles M. *The river towns of Connecticut: a study of Wethersfield, Hartford, and Windsor*. Johns Hopkins University. *Studies in Historical and Political Science*. Vol. VI, Nos. 7-9. Chapter II, on *Land System*.
- Egleston, Melville. *The land system of the New England colonies*. Johns Hopkins University. *Studies in History and Political Science*, Vol. IV, Nos. 11-12.
- Fry, William Henry. *New Hampshire as a royal province*. N. Y., 1908. Chapter IV, "*The Land System*."
- Hall, Hiland. *New York land grants in Vermont, 1765-1776*. Vermont Historical Society, *Collections*, I (1870): 145-159.



- Haven, Samuel F. *History of grants under the Great Council for New England*. Lowell Institute Lectures, Chapter IV. Boston, 1869.
- McLear, Anne Bush. *Early New England towns: a comparative study of their development*. N. Y., 1908. (Also in *Columbia University Studies in History, Science, and Public Law*, XXIX, No. 1) Chapter IV, "Town Lands."
- Mead, Nelson Prentiss. *Connecticut as a corporate colony*. Lancaster, Pa., 1906. Chapter III. "Land System."
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- Sullivan, James. *The history of land titles in Massachusetts*. Boston, 1891.
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### 3. Proprietors and Common Lands:

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- Angell, Joseph Kinnicut, and Ames, Samuel. *Treatise on the law of private corporation aggregate*. 11th ed., revised by John Lathrop. Boston, 1882 (1st ed. 1831). Chapter VI, "Of Proprietors of Common and Undivided Lands," pp. 181-196. Purely a legal treatise.
- Blake, Mortimer. *Taunton North Purchase*. Old Colony Historical Society, *Collections*, No. 3 (1885), pp. 31-53.

- Browne, Benjamine F. *An account of Salem commoners. . . . Essex Institute Historical Collections*, Vol. IV, pp. 2ff, 76ff, 129ff.
- Clark, Franklin C. *The commonage system of Rhode Island*. *The Magazine of History*, III (June, 1906) : 341-356 ; IV (July, 1906) : 17-25.
- Dorr, Henry C. *The proprietors of Providence and their controversies with the freeholders*. Rhode Island Historical Society, *Collections*, Vol. IX. Providence, 1897.
- Hammond, Otis Grant. *The Masonian title and its relation to New Hampshire and Massachusetts*. American Antiquarian Society, *Proceedings*, New Series, Vol. XXVI (1916) : 245-263.
- Gardiner, Robert H. *History of the Kennebec Purchase, or the proceedings under the grant to the colony of Plymouth of lands on the Kennebec*. Maine Historical Society, *Collections*, Vol. II : 269-294. Portland, 1847.
- Sheldon, John. *The common field of Deerfield*. Pocumtuck Valley Memorial Association, *Proceedings*, Vol. V (1905-1911) : 238-254. Deerfield, Mass., 1912.
- Staples, Carlton A. *The first English proprietors of the site of Lexington Village*. Lexington Historical Society, *Proceedings*, Vol. II (1889-99) : 5-18. Lexington, 1900.
- Staples, Carlton A. *A sketch of the history of Lexington common*. Lexington Historical Society, *Proceedings*, Vol. I (1886-1889) : 17-37. Lexington, 1890.
- State Supreme Court cases, Reports, of all New England States contain valuable materials on proprietors.
- True, R. A. *The Salisbury commoners*. Amesbury Historical Society, *Transactions*. Vol. I, No. 4. Amesbury, 1901.
- Walker, Joseph B. *The controversy between the proprietors of Bow and those of Penny Cook, 1727-1789*. New Hampshire Historical Society *Proceedings*, Vol. III (1895-1899) : 261-292.
- Waters, Thomas Franklin. *The development of our town government and common lands and commonage*.

Ipswich Historical Society, *Publications*, Vol. VIII. Salem, 1900.

Worth, Henry Barnard. *Nantucket land and land owners*. Nantucket Historical Association, *Bulletin*, Vol. II, Nos. 1-7 (1901-1902-1904-1906-1910-1913). Chapter X (Vol. II, No. 4) is on "*Sheep Commons and the Propriety*."

#### 4. Miscellaneous:

Canning, E. W. B. *Indian land grants in Stockbridge*. Berkshire Historical and Scientific Society, *Collections*, 1894, pp. 45-56.

Ford, Amelia Clewley. *Colonial precedents of our national land system as it existed in 1800*. University of Wisconsin, *Bulletin*, History Series, Vol. II. Madison, 1910.

Gordon, George A. *Early grant of land in the wilderness north of Merrimack*. Lowell, Mass., 1892.

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Perley, Sidney. *The Indian land titles of Essex County, Massachusetts*. Salem, 1912. Mostly Indian deeds.

Sato, Shosuke. *History of land question in the United States*. Johns Hopkins University, *Studies in History and Political Science*, Vol. IV, Nos. 7-9. Baltimore, 1886.

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Smith, Jonathan. *The Massachusetts and New Hampshire boundary line controversy, 1693-1740*. Massachusetts Historical Society, *Proceedings*, Vol. 43 (Nov. 1909): 77-88.

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## II. TOWN AND COUNTY HISTORIES

The town histories have been extensively examined and freely quoted, due mainly to the importance which is at-



tached to the following points: (1) that they often contain wholesale extracts from town and proprietors' records, which are sometimes unavailable elsewhere; (2) that they invariably touch upon the story of proprietors with whom the town histories generally begin and give an extended account, sometimes, of the town land, its distribution or sales; (3) that they furnish the general background of proprietary activities, particularly the background of proprietary controversies; and (4) that they contain, in many cases, long strings of genealogy for proprietors.

With these points particularly in mind, I have examined practically all the available town and county histories in the noted New England libraries including Harvard College Library, Boston Public Library, Boston Athaneum Library, Massachusetts Historical Society Library, Maine Historical Society Library, American Antiquarian Society Library, Connecticut State Library, Connecticut Historical Society Library, New Hampshire Historical Society Library, Forbes Library (Northampton, Mass.), and others. The result was, however, disappointing; the majority of the town and county histories examined gave no light on the subject. It is impossible to enumerate all these books which I have examined, under the above circumstances, in this list; the following is a very selected list, with particular reference to those books which have been cited in the study.

The following bibliographical guides were useful in the course of investigation. General: A. P. C. Griffin, *Bibliography of the historical publications issued by the New England States*. Cambridge, 1895. (Publication of the Colonial Society of Massachusetts, III, 1900). Massachusetts: Charles A. Flagg, *Guide to Massachusetts local history*. Maine: Joseph Williamson, *A bibliography of the State of Maine, from the earliest period to 1891*, 2 Vols., Portland, 1896. D. B. Hall, *Reference list on Maine local history*. New York State Library, *Bulletin*, No. 63 (Bibliography No. 28), Albany, 1901. New Hampshire: *Lists of books and pamphlets in the Dover Public Library relating to New Hampshire*. Dover, 1903. Connecticut: C. A. Flagg, *Reference list on Connecticut local history*, New York State Library, *Bulletin*, No. 53 (Bibliography 23), Albany, 1900. J. H. Trumbull, *List of books printed in Connecticut, 1709-1800*. Hartford, 1904. Rhode Island: *Bibliography of*

*Rhode Island history*. Boston, 1902. Since these respective dates, G. G. Griffin's *Writings on American history* were extremely helpful.

1. General:

- Adams, Charles Francis. *Genesis of the Massachusetts towns, and the development of town-meeting government*. Massachusetts Historical Society, *Proceedings*, 2nd Series, 1901-2, pp. 174-242. Remarks by Goodell, Chamberlaine, and Channing on the same subject follow. Reprint of the same, Cambridge, 1892.
- Adams, Herbert B. *The Germanic origin of New England towns*. Johns Hopkins University, *Studies in History and Political Science*, Vol. I., No. 2. Baltimore, 1882.
- Aldrich, P. E. *Origin of New England towns*. American Antiquarian Society, *Proceedings*, 1884.
- Channing, Edward. *Town and county government in the English colonies of North America*. Johns Hopkins University, *Studies in History and Political Science*, Vol. II, No. 10.
- Foster, W. E. *Town government in Rhode Island*. Johns Hopkins University, *Studies in History and Political Science*, Vol. IV, Pt. 2.
- Howard, George Elliott. *An introduction to the local constitutional history of the United States*. Johns Hopkins University, *Studies in History and Political Science*, Extra Volume IV. Baltimore, 1889. Vol. I is entitled "Development of the Township, Hundred, and Shire."
- Parker, Joel. *The origin, organization, and influence of the towns of New England*. Massachusetts Historical Society, *Proceedings*, (1866-1867) pp. 14-65.
- Peters, T. McLure. *A picture of town government in Massachusetts Bay Colony at the middle of the seventeenth century as illustrated by the town of Boston*. Boston.

2. Massachusetts:

- Adams, Charles Francis. *History of Braintree, Massachusetts (1639-1708), the North Precinct of Brain-*



- tree (1708-1792), and the town of Quincy (1792-1889). Cambridge, 1891.
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- Butler, Caleb. *History of the town of Groton.* Boston, 1848.
- Chase, George Fingate. *The history of Haverhill, Massachusetts, 1646-1860.* Haverhill, 1861.
- Copeland, Alfred Minott. *A history of the town of Murrayfield . . . , 1760-1863.* Springfield, Mass., 1892.
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- Frothingham, Richard. *History of Charlestown, Massachusetts.* Boston, 1845-49.
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- Heywood, William Swetzer. *History of Westminster, Massachusetts, 1728-1893.* Lowell, Mass., 1893.
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- Judd, S. *History of Hadley. . . .* Springfield, 1903.
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- 1622-1884. Weymouth Historical Society, *Publications*, No. 2. Weymouth, 1885.
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- Stearns, Ezra Scollay. *History of Ashburnham, Massachusetts, 1734-1886*. Ashburnham, Mass., 1887.
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### 3. Maine:

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- Dole, Samuel Thomas. *Windham in the past*. Auburn, Me., 1916. Chapters I, VI, IV on proprietors.
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- Lapham, William Berry, comp. *History of Bethel*,

- formerly Sudbury Canada . . . 1768-1890. Augusta, 1891.*
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- Lord, Charles C. *Life and times in Hopkinton, New Hampshire.* Concord, 1890.
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## 5. Vermont :

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- Hayes, Lyman Simpson. *History of the town of Rock-*



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